

On Fri, Apr 24, 2020 at 3:00 PM romeo carlos <romeogfx@gmail.com> wrote:
OFFICE OF THE GOVERNOR OF GUAM

Ricardo J. Bordallo Complex
513 West Marine Corps Drive
Hagåtña, Guam 96910

ATTN: Lourdes Leon Guerrero, Governor of Guam

Anthony M. Babauta, Chief of Staff, (tony.babauta@guam.gov)

Jon Junior Calvo, Deputy Chief of Staff, (jon.calvo@guam.gov)

Janela Carrera, Communications Director, (janela.carrera@guam.gov)

Krystal Paco, Press Secretary, (krystal.paco@guam.gov)

Haig Huynh, Legal Counsel, (haig.huynh@guam.gov)

Re: Freedom of Information Act Request

Håfa Adai Governor Lourdes Leon Guerrero :

I am submitting for consideration, the following request for information, as authorized under the Freedom of Information Act, also known as the Sunshine Reform Act of 1999, codified at 5 GCA Chapter 10.

I request that a digital/electronic or paper copy of the following documents [or documents containing the following information] be provided to me:

- 1) All documents related to procurement contracts, specifically related to Guam's 2020 public health emergency, pursuant to Executive Order 2020-03, and authorized by governor Lourdes Leon Guerrero, and/or lieutenant governor Josh Tenorio and/or any agent or person(s) authorized to negotiate and sign any such contracts and/or agreements on behalf of the government of Guam, including:
 - a) E-mails, text messages, and any digital/electronic communications relating to signed contracts and/or agreements for Covid-19 pandemic response services, including but not limited to, contracts, agreements, and Covid-19-related expenses incurred since March 1, 2020 for:
 - i. Guam Memorial Hospital, Dept. of Public Health and Social Services, public and private clinics, and similar facilities;
 - ii. Expenses, contracts, and agreements establishing temporary public medical facilities, to increase Covid-19 treatment, quarantine, and response capacity, and laboratory services, including contracts, agreements, and expenses related to construction and maintenance costs of said facilities;
 - iii. Contracts, agreements, and expenses associated with providing Covid-19 testing, including serological testing; handling and transportation of testing;
 - iv. Contracts, agreements, and expenses for emergency medical response expenses, including medical transportation contracts, agreements, and expenses related to Covid-19; including, but not limited to transport of

quarantined arrivals from ports of entry, patients, and medical and government personnel and staff engaged in Covid-19-related activities;

v. Contracts, agreements, and expenses for the acquisition and stockpiling of Medical supplies, including personal protection equipment, gowns, gloves, medicines and coronavirus/Covid-19 test kits (swabs and/or antibody test kits), tents, beds, and ventilators;

vi. Sanitation chemicals supplies, cleaning and laundry services;

vii. Quarantine facility and hotel services for government-mandated quarantine, including itemized cost of contracted daily room rate for hotel contracts;

viii. Contracts, agreements, and expenses for Covid-19-related costs for the maintenance of Dept. of Correction facilities, and other jails, prisons, and/or detention centers for youths and adults, including as relates to sanitation and improvement of social distancing measures, medical services and transportation of confined populations;

ix. Contracts, agreements, and expenses for care, sheltering, testing and transportation of Guam's homeless populations provided to mitigate, and address, Covid-19 effects and impacts, and to enable compliance with Covid-19 public health precautions.

b) Contracts, agreements, and proposals either wholly or partially implemented for Communication services, public service awareness programs, and content development for the territorial government public health orders, guidelines, and all such collateral related to Covid-19 orders and governmental communications, including but not limited to communications campaign development, creation, production, printing, uploading, dissemination and maintenance of all communication portals, sites and distribution points for said information, printed, digital, and electronic;

c) Contracts, agreements, and proposals, wholly or partially implemented, for expenses associated with the acquisition and distribution of medical and protective supplies, including, but not limited to: sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the Covid-19 public health emergency

d) Any contracts and/or agreements entered into for the disinfection of public areas, government facilities, and spaces, e.g., the Guam International Airport, nursing homes and/or Senior centers, in response to the Covid-19 public health emergency;

e) Contracts and/or agreements entered into by the government of Guam, and expenses associated with, any technical assistance provided to local authorities or other entities on mitigation of Covid-19-related threats to public health and safety.

2) Electronic/digital or paper copy of all pandemic-related contracts for any goods and services, medical and non-medical, procured since March 1, 2020 to date, copies of all such contracts, and any proposals for goods or services that have been wholly, or partially implemented; including:

a. the names and physical address of the vendor companies entered into contract with by the government of Guam;

- b. the names of the principals and shareholders of said vendor companies;
 - c. the contract value, terms and length of contract, and type of service or goods procured;
 - d. the names and titles of all government officials, agents and/or individuals acting in the capacity as a representative or agent for the government or a government official or agency, and the terms of compensation for any such agency; as well as,
 - e. any and all requests for proposals, request for bids, request for interest, public notification dates and contracts for such requests, and/or any citation for the abrogation and/or exemption from Guam procurement laws involved in the acquisition and consignment of any pandemic response-related vendor contracts;
- 3) The names of all government officials and/or agents who exercised custody over said communications and contracts, and dates for such custody;
- 4) Electronic/digital or paper copies of all pandemic-related, government of Guam-approved contracts and agreements submitted by Homeland Security and the Office of Civil Defense to the Federal Emergency Management Agency (FEMA) for review and accountability of same.

Additionally, I request as media, a waiver of all fees for this request. Disclosure of the requested information to me is in the greater public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, providing for critical transparency needs during this unprecedented social and public health crisis, and is not in any form or manner of financial interest to me or guamblog, which is the method in which I intend to disseminate this information to the public at large.

For your edification on my waiver request, as media, please take note of the federal Office of Management and Budget guidelines published March 27, 1987 (52 FR 10012) that include electronic publications and other nontraditional publishers as representatives of the news media. See also *National Security Archive v. U.S. Department of Defense*, 279 U.S. App. D.C. 308 (D.C. 1989).

Guamblog is a recognized source of reliable public information as noted through numerous citations and mentions in local press, print and electronic, as well as recognition by international media over the past 9 years, including MSNBC, Al Jazeera and multiple appearances on the BBC World News program.

Thank you for your consideration of this request. I look forward to your promptest response. My preferred method of receipt of your response is digital/electronic via email at: guamblog@ymail.com or romeogfx@gmail.com.

Sinceru yan magåhet

romeo carlos

guamblog.tumblr.com

facebook.com/guamblog

twitter.com/guamblog1

1455 Aguilar Road,
Yona, Guam 9569215-4912

UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

April 30, 2020

VIA ELECTRONIC MAIL: romeogfx@gmail.com

Romeo Carlos
1455 Aguilar Road,
Yona, Guam 9569215-4912

Dear Mr. Carlos:

I am writing in response to your request for information dated April 24, 2020, addressed to Governor Lourdes Leon Guerrero, in which you seek:

“1) All documents related to procurement contracts, specifically related to Guam’s 2020 public health emergency, pursuant to Executive Order 2020-03, and authorized by governor Lourdes Leon Guerrero, and/or lieutenant governor Josh Tenorio and/or any agent or person(s) authorized to negotiate and sign any such contracts and/or agreements on behalf of the government of Guam, including:

a) E-mails, text messages, and any digital/electronic communications relating to signed contracts and/or agreements for Covid-19 pandemic response services, including but not limited to, contracts, agreements, and Covid-19-related expenses incurred since March 1, 2020 for:

i. Guam Memorial Hospital, Dept. of Public Health and Social Services, public and private clinics, and similar facilities;

ii. Expenses, contracts, and agreements establishing temporary public medical facilities, to increase Covid-19 treatment, quarantine, and response capacity, and laboratory services, including contracts, agreements, and expenses related to construction and maintenance costs of said facilities;

iii. Contracts, agreements, and expenses associated with providing Covid-19 testing, including serological testing; handling and transportation of testing;

iv. Contracts, agreements, and expenses for emergency medical response expenses, including medical transportation contracts, agreements, and expenses related to Covid-19; including, but not limited to transport of quarantined arrivals from ports of

entry, patients, and medical and government personnel and staff engaged in Covid-19-related activities;

v. Contracts, agreements, and expenses for the acquisition and stockpiling of Medical supplies, including personal protection equipment, gowns, gloves, medicines and coronavirus/Covid-19 test kits (swabs and/or antibody test kits), tents, beds, and ventilators;

vi. Sanitation chemicals supplies, cleaning and laundry services;

vii. Quarantine facility and hotel services for government-mandated quarantine, including itemized cost of contracted daily room rate for hotel contracts;

viii. Contracts, agreements, and expenses for Covid-19-related costs for the maintenance of Dept. of Correction facilities, and other jails, prisons, and/or detention centers for youths and adults, including as relates to sanitation and improvement of social distancing measures, medical services and transportation of confined populations;

ix. Contracts, agreements, and expenses for care, sheltering, testing and transportation of Guam's homeless populations provided to mitigate, and address, Covid-19 effects and impacts, and to enable compliance with Covid-19 public health precautions.

b) Contracts, agreements, and proposals either wholly or partially implemented for Communication services, public service awareness programs, and content development for the territorial government public health orders, guidelines, and all such collateral related to Covid-19 orders and governmental communications, including but not limited to communications campaign development, creation, production, printing, uploading, dissemination and maintenance of all communication portals, sites and distribution points for said information, printed, digital, and electronic;

c) Contracts, agreements, and proposals, wholly or partially implemented, for expenses associated with the acquisition and distribution of medical and protective supplies, including, but not limited to: sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the Covid-19 public health emergency

d) Any contracts and/or agreements entered into for the disinfection of public areas, government facilities, and spaces, e.g., the Guam International Airport, nursing homes and/or Senior centers, in response to the Covid-19 public health emergency;

e) Contracts and/or agreements entered into by the government of Guam, and expenses associated with, any technical assistance provided to

local authorities or other entities on mitigation of Covid-19-related threats to public health and safety.

2) Electronic/digital or paper copy of all pandemic-related contracts for any goods and services, medical and non-medical, procured since March 1, 2020 to date, copies of all such contracts, and any proposals for goods or services that have been wholly, or partially implemented; including:

- a. the names and physical address of the vendor companies entered into contract with by the government of Guam;
- b. the names of the principals and shareholders of said vendor companies;
- c. the contract value, terms and length of contract, and type of service or goods procured;
- d. the names and titles of all government officials, agents and/or individuals acting in the capacity as a representative or agent for the government or a government official or agency, and the terms of compensation for any such agency; as well as,
- e. any and all requests for proposals, request for bids, request for interest, public notification dates and contracts for such requests, and/or any citation for the abrogation and/or exemption from Guam procurement laws involved in the acquisition and consignment of any pandemic response-related vendor contracts;

3) The names of all government officials and/or agents who exercised custody over said communications and contracts, and dates for such custody;

4) Electronic/digital or paper copies of all pandemic-related, government of Guam-approved contracts and agreements submitted by Homeland Security and the Office of Civil Defense to the Federal Emergency Management Agency (FEMA) for review and accountability of same."

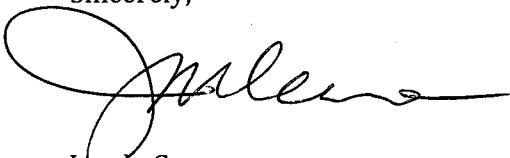
In response to item #3, enclosed are the following documents:

- FEMA-Territory Agreement FEMA-3466-EM-GU
- FEMA-Territory Agreement FEMA-4495-DR-GU

In order to respond to the remaining items in your request, and pursuant to 5GCA 10103(e), it is necessary for us to extend the time to respond to your request for information by up to 10 days. A response will be provided to you no later than May 10, 2020.

Please let me know if you have any questions or concerns.

Sincerely,



Janelle Carrera
Director of Communications



OFFICE OF LEGAL COUNSEL

Ufisinan I Maga'hågan Guåhan
Office of the Governor of Guam

LOURDES A. LEON GUERRERO
Governor of Guam

JOSHUA F. TENORIO
Lieutenant Governor of Guam

Via Pick-Up

March 20, 2020

LEO RUSTUM J. ESPIA

Acting Deputy Administrator
GUAM HOMELAND SECURITY
OFFICE OF CIVIL DEFENSE
221B Chalan Palasyo
Agana Heights, Guam 96910

Re: FEMA-Territory Agreement (U.S. Department of Homeland Security, Region IX)

Dear Mr. Espia:

The following packet is transmitted with the signatures of *I Maga'hågan Guåhan* and the Chief of Staff:

FEMA-Territory Agreement: FEMA-3466-EM-GU

Any questions or concerns can be sent directly to the Legal Counsels via email (haig.huynh@guam.gov or sophia.diaz@guam.gov) or call 475-9475/9476.

Senseramente,

HAIG T. HUYNH

Legal Counsel

Enclosure(s): Agreement

cc via email: *Maga'hågan Guåhan*
Sigundo Maga'låhen Guåhan



FEMA

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

I. PURPOSE AND BACKGROUND

On March 13, 2020, the President declared that an emergency exists nationwide as a result of Coronavirus Disease 2019 (COVID-19) beginning on January 20, 2020 and continuing. FEMA will provide assistance to the Territory of Guam through this FEMA-Territory Agreement (Agreement) under this emergency (Declaration) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (Stafford Act), in accordance with 44 CFR § 206.44. The number for this Agreement is FEMA-3466-EM. This Agreement between the United States of America through the Regional Administrator, Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS) or his/her delegate, and the Territory of Guam (Territory or Recipient) governs all federal assistance FEMA provides the Territory under the Declaration.

II. GENERAL PROVISIONS

- A. **GRANT AWARD PACKAGE.** Any federal grant award (which includes a cooperative agreement for purposes of this Agreement) package issued under this Agreement will consist of the Declaration, this Agreement, and the *Application(s) for Federal Assistance* (Standard Form (SF) 424), including *Assurances- Non-Construction Programs* (SF-424B) and also the *Assurances - Construction Programs* (SF 424D) when applicable, submitted by the Territory for each grant program provided under the Declaration and this Agreement.
- B. **FEMA RESPONSIBILITIES.** FEMA may provide federal assistance to the Territory or residents of the Territory, if applicable, funds in the form of federal grant assistance or direct federal services to support the activities and programs authorized under the Stafford Act and the President's Declaration (federal assistance) in accordance with this Agreement.
- C. **TERRITORY RESPONSIBILITIES.**
1. The Territory agrees to comply with the federal grant award terms and conditions set forth in the Declaration, this Agreement, individual projects, records of environmental consideration, and the Territory Administrative Plans in place for each grant award.
 2. The Territory agrees to lead, manage and drive the overall recovery process and coordinate recovery activities and technical support by setting appropriate territory policies. The Territory will coordinate with local, Tribal and Federal governments

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

and agencies, private businesses and nonprofit organizations to lead and coordinate territory recovery planning and assistance to impacted communities.

3. The Territory agrees to be the “Recipient” for all federal financial assistance provided under the Stafford Act and this Agreement, with the exception of Housing Assistance or for Other Needs Assistance when administered by FEMA rather than by the Territory (i.e., the “the FEMA option”) under the Individuals and Households Program, if applicable. The Territory also serves as the “pass-through entity” with respect to the Territory’s role in providing subawards and administering grant assistance provided to sub-recipients.
 - a. Recipient and pass-through entity have the same meaning as “Grantee,” as used in governing statutes, regulations, and FEMA guidance.
 - b. A recipient is also a “non-federal entity” for grants administration purposes.
4. The Territory will serve as the “pass-through entity” with respect to the Territory’s role in providing subawards and administering grant assistance provided to subrecipients. As the pass-through entity, the Territory agrees to comply with, and will require all subrecipients to comply with, the requirements of all applicable laws and regulations, including the Stafford Act, Title 44 of the Code of Federal Regulations (CFR) (*Emergency Management and Assistance*), 2 CFR Part 3002 (implementing 2 CFR Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*)), and applicable FEMA policies and guidance.
 - a. The term “subrecipient” has the same meaning as “subgrantee,” as used in governing statutes, regulations, and FEMA guidance.
 - b. A subrecipient is also a “non-federal entity” for grants administration purposes.

D. CERTIFICATION AND WAIVERS.

1. **Attachment 1** to this Agreement lists the Territory officials named by the Governor as authorized to execute certifications and otherwise to act on behalf of and to legally bind the Territory are listed on.
2. **Attachment 2** to this Agreement is the Territory’s Certification Regarding Lobbying. This certification complies with the Lobbying Prohibitions in the DHS Standard Terms and Conditions and with the FEMA regulations found at 44 CFR Part 18 (*New Restrictions on Lobbying*).
3. The Governor certifies that appropriate action has been taken under Territory a law and the emergency plan has been executed.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

4. The Territory waives any consultation process under Executive Order 12372 (*Intergovernmental review of Federal programs*) and 44 CFR Part 4 (*Intergovernmental Review of Federal Emergency Management Agency (FEMA) Programs and Activities*) for grants, loans, or other financial assistance under the Stafford Act for the Declaration .

E. FEDERAL ASSISTANCE.

1. Federal assistance is limited to activities necessary to alleviate damage, loss, hardship, or suffering resulting from the incident that took place during the incident period, except that reasonable expenses that were incurred in anticipation of and immediately preceding such event may be eligible.
2. Federal assistance under the Stafford Act and this Agreement is limited to those areas and programs designated by the President or FEMA for this major disaster or emergency, which are listed in **Attachment 3** to this Agreement and are incorporated by reference.
3. All scopes of work and costs approved as a result of this Agreement, whether as estimates or final costs approved through subawards, project worksheets, or otherwise, will incorporate by reference the terms of this Agreement and must comply with applicable laws, regulations, policy and guidance in accordance with this Agreement.
4. Pursuant to Executive Order 13858 "Strengthening Buy-American Preferences for Infrastructure Projects," FEMA encourages recipients to use, to the greatest extent practicable and consistent with the law, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States, in Public Assistance eligible public infrastructure repair and construction projects affecting surface transportation, ports, water resources including sewer and drinking water, and power. Such preference must be consistent with the law, including cost and contracting requirements at 2 CFR Part 200.

F. CONTROLLING AUTHORITIES. This Agreement is subject to the following governing authorities:

1. The Stafford Act and its implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR), and FEMA policy and guidance.
2. "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," 2 CFR Parts 200 and 3002.
3. The DHS Standard Terms and Conditions for grants in effect on the date this event was declared, available at <http://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions> which are hereby incorporated by reference.

III. TYPES OF FEDERAL ASSISTANCE

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

The President may authorize any of the following federal assistance programs and **Attachment 3** to this Agreement sets forth the specific federal assistance programs authorized for this Declaration.

A. PUBLIC ASSISTANCE (PA). When the Declaration authorizes Emergency Work under the PA Program, and FEMA makes a PA grant award to the Territory, the following terms apply:

1. Cost Share. FEMA funding for PA project costs (which do not include management costs) will be limited to 75 percent of total eligible costs after appropriate reductions, except as may be provided for in any subsequent cost share amendments to the Declaration. The Territory agrees to make available the non-federal cost share of PA.
2. Direct Federal Assistance. When Direct Federal Assistance is requested and the assistance is provided:
 - a. The Territory will:
 - i. Provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work;
 - ii. Hold and save the United States free from damages due to the requested work, and will indemnify the Federal Government against any claims arising from such work;
 - iii. Provide reimbursement to FEMA for the non-federal share of the cost of such work; and
 - iv. Assist the performing federal agency in all support and local jurisdictional matters.
 - b. FEMA will bill the Territory for the non-federal cost share of Direct Federal Assistance provided and the Territory agrees to pay the non-federal share pursuant to the timeframes set forth in the letter or other correspondence transmitting the bill.
3. Debris Removal. When debris removal is authorized, the Territory agrees to indemnify and hold harmless the United States for any claims arising from the removal of debris or wreckage for this major disaster or emergency. The Territory agrees that debris removal from public and private property will not occur until an unconditional authorization for the removal of debris is provided.

B. INDIVIDUAL ASSISTANCE (IA). When the Declaration authorizes IA programs, and FEMA makes an IA grant award to the Territory, the following terms apply as applicable:

1. General. FEMA may award grant funds to the Territory for the IA programs authorized under the Declaration and requested by the Territory and, for Direct

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

Temporary Housing and Permanent Housing Construction, may provide direct assistance.

2. Other Needs Assistance. When the Declaration authorizes the Individual and Households Program (IHP), and FEMA provides IHP assistance including Other Needs Assistance (ONA) to individuals and households, the Territory agrees to make available its 25 percent share of any ONA that is provided under Section 408(e) of the Stafford Act (42 U.S.C. § 5174(e)).
 - a. FEMA Option. When FEMA administers ONA under the FEMA Option, FEMA will bill the Territory monthly for the cost share. The Territory agrees to pay the amount billed within 30 days of receipt.
 - b. Joint Option. If the Territory administers ONA under the Joint Option, a Cooperative Agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individual and households and actual administrative costs in accordance with Section 408 of the Stafford Act (42 U.S.C. §5174) and 44 C.F.R. §206.120. Administrative costs will equal up to 4 percent of the ONA grant.
 - c. Territory Option. If the Territory administers ONA under the Territory Option, an ONA Grant Agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individual and households and actual administrative costs in accordance with Section 408 of the Stafford Act (42 U.S.C. §5174) and 44 C.F.R. §206.120. Administrative costs will equal up to 4 percent of the ONA grant.
3. Additional Terms and Conditions. Additional terms and conditions regarding implementation of the IHP and other applicable Individual Assistance (IA) Programs including IA Grant performance goals may be included in an attached **IA Programmatic Addendum.**

IV. FUNDING

A. PAYMENT PROCESS.

1. Payment System. FEMA will pay the Territory using the U.S. Department of Health and Human Services Payment Management System (HHS/Smartlink).
2. Payments. Payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205 (*Rules and Procedures for Efficient Federal-State Funds Transfers*) and Treasury Financial Management Manual, Volume 1, Part 4A-2000.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

3. PA Overpayments. FEMA will use a “single obligation” system to process payments through a subaccount for each subaward under PA and HMGP. When FEMA identifies an overpayment as a potential debt, the Territory will have 60 days to appeal that initial determination. Upon exhaustion of appeal rights, the Territory will have 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center (FFC) for collection. The Territory may resolve the amount owed by paying FEMA directly. It may also deposit the amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the Territory may request administrative offset of the amount owed against identifiable, allowable, allocable, and reasonable costs under the same subaward which have not yet been reimbursed by FEMA.
4. No Property Interest. The Territory and subrecipients have no property interest in the funds made available through the HHS/Smartlink account. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the Territory in HHS/Smartlink due to grant amendments, partial or full grant terminations, closeouts, or other reasons.

B. AVAILABILITY OF FUNDING. FEMA and the Territory agree to take measures to deliver assistance to individuals, households, governments and private nonprofits as expeditiously as possible, consistent with federal laws and regulations.

1. This Agreement does not comprise an award of any type of assistance authorized for the Declaration or as described in Part III, Types of Federal Assistance, above and this Agreement does not obligate any federal funding. Rather, FEMA will separately make such award decisions for the assistance authorized for the Declaration.
2. If FEMA decides to make an award of federal assistance, such assistance will be made available within the limits of funds available from Congressional appropriations for such purposes.
3. FEMA may, in its sole discretion, if necessary because of limited funds, give first priority to assistance for individuals and households, emergency work for protection of public health and safety, and administrative costs for managing the disaster programs. FEMA will provide other financial assistance when, and if, funds become available and will generally provide them in the order the claims are received.

V. REPORTING

A. FEDERAL FINANCIAL REPORTS.

1. Initial and Quarterly Financial Reports.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

- a. The Territory must submit complete and accurate Federal Financial Reports (Standard Form 425) to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date for each program. The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the Territory. Subsequent reporting requirements will not be waived. The Territory must submit quarterly financial status reports thereafter until closeout of the federal grant award for each program funded. Reports are due on January 30, April 30, July 30, and October 30.
 - b. The Territory must indicate in the remarks section on the quarterly financial report each time it has submitted a final expenditure report for a project or subaward as detailed in paragraph V.B below. The information must include the name of the subrecipient, the project number, and the date on which the Territory submitted the project closeout report. If it is the last project for a subrecipient, then the Territory must also note that the quarterly report reflects the last expenditures of that subrecipient.
2. Final Financial Report. The Territory must submit a complete and accurate final Federal Financial Report (SF 425), no later than 90 days after each program's federal grant award performance period expiration date.

B. FINAL EXPENDITURE REPORT FOR PROJECT COMPLETION

1. PA Large Project Final Expenditure Report
 - a. The Territory must submit a payment of claim to FEMA for each PA large project as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The Territory must submit the final payment of claim for a PA large project within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
2. PA Small Project Final Expenditure Report
 - a. The Territory must provide a small project certification for itself and each subrecipient as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The Territory must submit the certification within 180 days from the earlier of the date that the non-Federal entity completes its last small project or the latest project completion deadline of a small project.
3. PA Management Cost Project Final Expenditure Report

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

- a. The Territory must submit a payment of claim to FEMA for each subrecipient's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the subrecipient's last non-management cost PA project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a subrecipient's non-management cost PA project for the Declaration; or
 - iii. Two years from the date of the Declaration.
- b. The Territory must submit a payment of claim to FEMA for the Territory's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the last non-management cost PA project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a non-management cost PA project for the Declaration;
 - iii. Two years from the date of the Declaration.

4. Governmental Subrecipients

- a. FEMA will confirm the reports described in paragraphs 1, 2, and 3 as the final expenditure report only if the Territory has submitted all outstanding information and certifications required by applicable regulations and FEMA policy and guidance and the report is complete and accurate.
- b. The confirmed, complete, and accurate project closeout report is the "final expenditure report for project completion as certified by the grantee" for the purposes of applying Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)).

C. PERFORMANCE REPORTS.

- 1. Initial and Quarterly Reports. The Territory must submit performance/progress reports in compliance with each program identified under this Agreement to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date. The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the grantee. Subsequent reporting requirements will not be waived. The Territory must submit quarterly performance/progress status reports thereafter until the grant performance period ends. Reports are due on January 30, April 30, July 30, and October 30.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

2. Report Content. The Territory must include in its quarterly performance/progress reports (OMB Form 1660-0017 PA for PA) a status of project/subaward completion, amount of expenditures, and amount of payment for advancement or reimbursement of costs for each project/subaward funded under each of the programs authorized under this Agreement. The Territory must submit project overruns requiring additional obligations to FEMA for review and approval prior to incurring costs.
3. Project Cost Overruns. The Territory must submit project cost overruns requiring additional obligations to FEMA for review and approval. Where review and approval is not sought before incurring the costs of an overrun, there is no assurance that FEMA will reimburse such costs.
4. Final Performance Report. The Territory must submit a final performance/progress report 90 days from each program's grant award performance period expiration date that addresses all approved activities and the performance goals outlined in the federal award.

D. ENFORCEMENT. FEMA may suspend drawdowns, provide other special conditions or take other authorized action pursuant to 2 CFR § 200.338 (*Remedies for Noncompliance*) if the Territory does not submit accurate and timely reports. This may include, among other things, the administrative closeout of a grant and/or any projects under a grant when the Territory is not responsive to reasonable efforts FEMA makes to collect required reports needed to complete closeout. Administrative closeout is a unilateral mechanism by FEMA to move forward with project or grant closeout using available grant information in lieu of final reports. This can require FEMA to make cash or cost adjustments and ineligible cost determinations, which may result in identifying a debt owed by FEMA.

E. RECORDS RETENTION.

1. Territory Requirement. The Territory must retain records for 3 years, except in certain rare circumstances described in 2 CFR § 200.333 (*Retention requirements for records*), from the date it submits the final Federal Financial Report (SF 425) to FEMA in compliance with 2 CFR § 200.333, notwithstanding the time period prescribed for subrecipients in subsection 2, Subrecipient Requirement, below. If FEMA administratively closes the grant where no final SF-425 was submitted, FEMA uses the date the grant was administratively closed as the start date for the 3-year record retention period. Subrecipient Requirement. The Territory must require subrecipients to retain project or subaward records for 3 years from the date that the Territory submits to FEMA the final expenditure report for a project or subaward as described above in Part V.B. If, however, there is any litigation, claim, negotiation, audit, request for information, or other action involving the project or subaward that starts before that date, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the 3-year period, whichever is later.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

VI. RECOVERY OF FUNDS

- A. **IN GENERAL.** FEMA may disallow costs and recover funds based on the results of audit or review during or after performance of the award to ensure compliance with the terms of the Agreement and award document. FEMA is required to recover funds when the Recipient or subrecipient has ineligible underruns (for example, actual costs for a PA large project are less than the amount FEMA awarded based on initial estimates); knowingly or negligently withholds or misrepresents material information; fails to complete work and comply with the terms of this Agreement or the approved award; expends federal funds in error; or incurs costs that are unreasonable or otherwise disallowed. If after exhaustion of appeal rights, FEMA determines a debt is owed, the Territory has 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center for collection. The Territory may do so by directly paying FEMA. The Territory may also deposit the amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the Territory may request to substitute unallowable costs for other costs that are allowable (e.g., necessary, allocable, and reasonable under the same award and have not yet been reimbursed by FEMA
- B. **DUPLICATION OF BENEFITS.**
1. **General.** The Territory must take all actions necessary and reasonable to ensure that all who receive federal assistance are aware of their responsibility to repay federal assistance that is duplicated by amounts available from insurance or any other source for the same purpose. FEMA may at any time pre-award or post-award adjust the level of funding provided to account for financial assistance provided from any other source for the same purpose as the federal assistance, or to account for benefits available for the same purpose from another source, irrespective of whether they are actually received.
 2. **Insurance.** Within his/her authorities, the Governor must ensure, through the territory agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster survivors and others who receive federal assistance. The Territory must also take all reasonable steps to ensure that disaster survivors are aware of procedures for filing insurance claims, and are informed of any territory procedures instituted for assisting insured disaster survivors.
- C. **COOPERATION.** The Territory agrees, on its behalf and on behalf of its political subdivisions and others that receive federal assistance, to cooperate with the Federal Government in seeking recovery of federal assistance against any party or parties whose intentional acts or omissions or whose negligence or other tortious conduct may have caused or contributed to the damage or hardship for which federal assistance was provided under this Agreement. If applicable, FEMA will treat recovered funds as duplicated

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

benefits available to the recipient/ subrecipient in accordance with Section 312 of the Stafford Act (42 U.S.C. § 5155).

- D. TERRITORY RESPONSIBILITIES.** The Territory is responsible for the recovery of federal assistance expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
1. The Territory must adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF 425.
 2. The Territory must designate on its PA quarterly progress reports the applicants/ subrecipients from which they have not processed recoveries but from which recoveries are due FEMA.
 3. The Territory is responsible for notifying FEMA of any potential debt as a result of federal funds expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
 4. The Territory must report all cases of suspected fraud to the DHS Office of Inspector General. The Territory must cooperate with any investigation conducted by the DHS Office of Inspector General.
 5. The Territory must cooperate with FEMA regarding any and all lawsuits that may result from the Territory or FEMA's attempt to recover funds or disallow costs.
- E. STATUTE OF LIMITATIONS.**
1. General. The 3-year statute of limitations limiting FEMA's ability to recover funds paid as provided for in Section 705(a) of the Stafford Act (42 U.S.C. § 5205(a)) begins with the Territory's submission of the "final expenditure report" described in paragraphs V.B 1, 2, and 3.
 2. Initiation of an Administrative Action to Recover Payment. The initiation of an administrative action to recovery payments includes FEMA's written notice to the Territory or subrecipient of a questioned or disallowed cost or improper payment (including a request for information concerning such cost or payment) and written notice to the Territory or subrecipient of a FEMA or 3rd party review or audit.
- F. REFUNDS, REBATES AND CREDITS.** The Territory must transfer to FEMA the appropriate share, based on the federal support percentage, of any refund, rebate, credit or other amounts arising from the performance of this agreement. The Territory must take necessary action to promptly collect all monies due or which may become due and if applicable, to cooperate with the Federal Government in any claim or suit in connection with amounts due.

VII. CONSTRUCTION REQUIREMENTS

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

Prior to the start of any construction activity, the Territory will ensure that all applicable federal, territory, and local permits and approvals are obtained and all permit conditions are addressed including FEMA and recipient/subrecipient compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other applicable environmental laws and executive orders. All construction should be in accordance with approved permits, projects plans and specifications, applicable building codes and program guidance.

VIII. PERFORMANCE PERIODS

- A. **PROGRAM/GRANT AWARD.** The Territory will complete all grant award activities, including all projects and/or activities approved under each federal grant award, within the time period prescribed in FEMA regulations, program guidance and the award documents.
- B. **EXTENSIONS.** The Territory will include with any written request for an extension information and documentation to support the amendment and a schedule for completion. FEMA may approve subsequent work, monetary increase amendments, or activity time extension amendments only if the Territory submits all financial and performance reports to the appropriate Regional Office. FEMA will only approve extensions to the federal grant award period of performance or project completion timelines (if applicable) that comply with program regulatory timeframes. FEMA will not approve extensions for delays caused by lack of non-federal share funding.

IX. REMEDIES FOR NONCOMPLIANCE

FEMA may take action as it determines appropriate under the circumstances including but not limited to withholding of payments, disallowance of costs, suspension or termination of the award if the Territory or sub-recipient fails to comply with applicable Federal statutes, regulations or the terms of this Agreement pursuant to 2 CFR § 200.338 (Remedies for Noncompliance).

X. ATTACHMENTS, PROGRAMMATIC ADDENDUMS AND AMENDMENTS

- A. **ATTACHMENTS.** Attached and also made part of this Agreement are the following Attachments which contain the terms and conditions applicable to all assistance provided under this Agreement:

Attachment 1: List of Territory Certification Officers

Attachment 2: Certification Regarding Lobbying

Attachment 3: List of Designated Programs and Areas

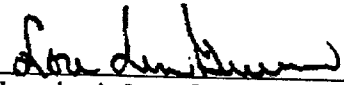
- B. **AMENDMENTS.** This Agreement may be amended at any time by written approval of both parties. Executed amendments will be numbered and appended to this agreement in the order that they are executed. Electronic copies of executed amendments will be transmitted to the FEMA Declarations Unit.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

XII. SIGNATURES AND EFFECTIVE DATE

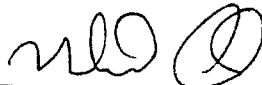
- A. **COUNTERPART SIGNATURES.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a .pdf format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or .pdf signature page were an original thereof.
- B. **EFFECTIVE DATE.** This FEMA-Territory Agreement becomes effective on the date of signature by the last Party.

Agreed:



Lourdes A. Leon Guerrero
Governor
Territory of Guam
3/20/2020

Date



Robert J. Fenton
Regional Administrator
FEMA Region IX
3/23/20

Date

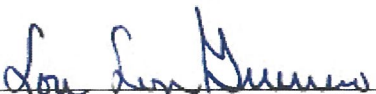
**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

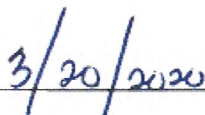
**ATTACHMENT 1
LIST OF TERRITORY CERTIFICATION OFFICERS**

1. The Governor hereby certifies that Anthony M. Babauta is the Governor's Authorized Representative (GAR) empowered to execute on behalf of the Territory all necessary documents for federal assistance, including approval of subawards and certification of claims for Public Assistance. P. Tim Aguon is the Alternate Governor's Authorized Representative and is similarly empowered.
2. The Governor hereby certifies that Charles V. Esteves and Leo Rustum J. Espia are the Territory Coordinating Officer (TCO) and Alternate TCO, respectively, who will act in cooperation with the Federal Coordinating Officer under this Declaration.
3. The Governor hereby certifies that Marie T. Quenga and Kenny R. Artero are the representatives of the Territory authorized to receive donations or loans of surplus property on behalf of the Territory and to execute certification, agreements, and other necessary documents with regard thereto.
4. The Governor hereby certifies that Ciriaco S. Sanchez and Marie T. Quenga are the Territory officials authorized to execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in full compliance with FEMA nondiscrimination regulations (44 CFR Part 7, *Nondiscrimination in Federally-Assisted Programs* and 44 CFR § 206.11, *Nondiscrimination in disaster assistance*).
5. The Governor hereby certifies that Claudia S. Acfalle, Marie T. Quenga, and Ciriaco S. Sanchez are the Territory officials who will execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Restrictions on approval authority of the above named officials: None.

Agreed:


Lourdes A. Leon Guerrero
Governor


Date

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

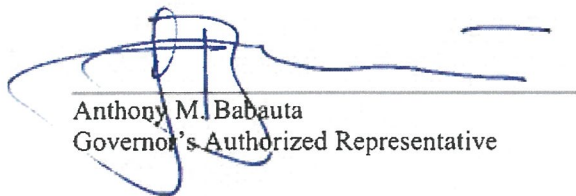
**ATTACHMENT 2
CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 CFR Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification must be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Anthony M. Babauta
Governor's Authorized Representative

3/20/2020

Date

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

**ATTACHMENT 3
LIST OF DESIGNATED AREAS AND PROGRAMS**

Eligible applicants in the Territory of Guam are eligible to apply for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.



FEMA-TERRITORY AGREEMENT FEMA-4495-DR-GU

I. PURPOSE AND BACKGROUND

The President declared on March 27, 2020, that a major disaster exists in the Territory of Guam. This declaration was based on COVID-19 (incident) beginning on January 20, 2020, and continuing (incident period). This is the FEMA-Territory Agreement (Agreement) for this major disaster, designated FEMA-4495-DR (Declaration), under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. §§ 5121-5207) (Stafford Act), in accordance with 44 C.F.R. § 206.44. This Agreement between the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS) and the Territory of Guam (Territory or Recipient) governs all federal assistance that FEMA provides the Territory for this Declaration.

II. GENERAL PROVISIONS

- A. GRANT AWARD PACKAGE.** Any federal grant (which includes a cooperative agreement for purposes of this Agreement) award package issued under this Agreement will consist of the Declaration, this Agreement, and the *Application(s) for Federal Assistance* (Standard Form (SF) 424), including *Assurances – Non-Construction Programs* (SF-424B) and *Assurances – Construction Programs* (SF 424D), when applicable, submitted by the Territory for each grant provided under the Declaration and this Agreement.
- B. FEMA RESPONSIBILITIES.** FEMA may provide federal assistance to the Territory or residents of the Territory, if applicable, in the form of federal grant assistance, payments to individuals, and/or direct federal services to support the activities and programs authorized under the Stafford Act and the Declaration in accordance with this Agreement.
- C. TERRITORY RESPONSIBILITIES**
1. The Territory agrees to comply with the federal grant award terms and conditions set forth in the Declaration, this Agreement, individual projects, records of environmental consideration, Territory Mitigation Plan (if applicable) and the Territory Administrative Plans in place for each grant award.
 2. The Territory agrees to lead, manage, and drive the overall recovery process and coordinate recovery activities and technical support by setting

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

appropriate territory policies. The Territory will coordinate with local, tribal and Federal governments and agencies, private businesses, and nonprofit organizations to lead and coordinate territory recovery planning and assistance to impacted communities.

3. The Territory agrees to be the “Recipient” for all federal financial assistance provided under the Stafford Act and this Agreement, with the exception of financial assistance for Temporary Housing and financial assistance for Housing Repair and Replacement under the Individuals and Household Program (IHP) that is always administered by FEMA or for Direct Temporary Housing, Permanent Housing, and/or Other Needs Assistance (ONA) under the IHP when administered by FEMA rather than by the Territory (*i.e.*, the “FEMA option”), if applicable.
 - a. Recipient has the same meaning as “Grantee” as used in governing statutes, regulations, and FEMA guidance.
 - b. A recipient is also a “non-Federal entity” for grants administration purposes.
4. The Territory will serve as the “pass-through entity” with respect to the Territory’s role in providing subawards and administering grant assistance provided to subrecipients. As the pass-through entity, the Territory agrees to comply with and will require all subrecipients to comply with the requirements of all applicable laws and regulations, including the Stafford Act, Title 44 of the Code of Federal Regulations (C.F.R.) (*Emergency Management and Assistance*), 2 C.F.R. Part 3002 (implementing 2 C.F.R. Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*)), and applicable FEMA policies and guidance.
 - a. The term “subrecipient” has the same meaning as “subgrantee” as used in governing statutes, regulations, and FEMA guidance.
 - b. A subrecipient is also a “non-Federal entity” for grants administration purposes.
 - c. A subrecipient may also serve as a pass-through entity under certain circumstances in the Hazard Mitigation Grant Program (HMGP)
5. The Territory is required to maintain a FEMA-approved Territory Mitigation Plan (TMP) in accordance with 44 C.F.R. Part 201 (*Mitigation Planning*) as a condition of receiving non-emergency Stafford Act assistance.
 - a. The Territory must update its TMP every five years.

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- b. The Territory must have a FEMA-approved mitigation plan to receive the following assistance:
 - i. Public Assistance (PA) – Permanent Work Categories C-G
 - ii. HMGP
 - c. FEMA will not obligate funds for PA Permanent Work or HMGP projects unless that Territory has a FEMA-approved TMP.
 - d. If the Territory does not have a FEMA-approved TMP as of the date of the Declaration, the Territory must submit its approvable TMP within 30 days of the date of the Declaration for FEMA review and approval. If the Territory fails to do so, FEMA will deny the Territory’s application for PA Permanent Work and HMGP assistance under the Declaration.
 - e. If the Territory’s FEMA-approved SMP lapses after the Declaration, the Territory must submit its approvable TMP within 30 days of the lapse for FEMA review and approval. FEMA will cease obligating funds for PA Permanent Work or HMGP projects during any lapse period between expiration of the current TMP and approval of an updated TMP.
- 6. The Territory agrees that any supplies, materials, equipment, goods, or property introduced into the Territory by the Government of the United States, or its contractors, as part of, or in conjunction with, the assistance provided in this Agreement are exempt from any tariffs, customs duties, or import and export taxes in the Territory. The Territory will issue expeditiously any import licenses required for supplies, materials, equipment, goods or property imported under this Agreement and will assist, where appropriate, in expediting their movement through port and transportation facilities and their clearance through customs.

D. CERTIFICATION AND WAIVERS

- 1. **Attachment 1** to this Agreement lists the Territory officials named by the Governor as authorized to execute certifications and otherwise to act on behalf of and to legally bind the Territory.
- 2. **Attachment 2** to this Agreement is the Territory’s Certification Regarding Lobbying. This certification complies with the lobbying prohibitions in the DHS Standard Terms and Conditions and with the FEMA regulations at 44 C.F.R. Part 18 (*New Restrictions on Lobbying*).
- 3. The Territory waives any consultation process under Executive Order 12372 (*Intergovernmental review of Federal programs*) and 44 C.F.R. Part 4 (*Intergovernmental Review of Federal Emergency Management Agency*

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

(FEMA) Programs and Activities) for grants, cooperative agreements, loans, or other financial assistance under the Stafford Act for the Declaration.

E. FEDERAL ASSISTANCE

1. The Territory has requested federal assistance and submitted a FEMA Form 010-0-13 (*Request for Presidential Disaster Declaration – Major Disaster or Emergency*), the terms, representations, and assurances of which are incorporated by reference into this Agreement.
2. Federal assistance, except for assistance under the HMGP, is limited to activities necessary to alleviate damage, loss, hardship, or suffering resulting from the incident that took place during the incident period, except that reasonable expenses that were incurred in anticipation of and immediately preceding the incident may be eligible.
3. Federal assistance under the Stafford Act and this Agreement is limited to those areas and programs designated by the President or FEMA in the Federal Register Notices for this Declaration, which are listed in **Attachment 3** to this Agreement and are incorporated by reference into this Agreement.
4. All scopes of work and costs approved as a result of this Agreement, whether as estimates or final costs approved through subawards, project worksheets, or otherwise, will incorporate by reference the terms of this Agreement and must comply with applicable laws, regulations, policy, and guidance in accordance with this Agreement.
5. Pursuant to Executive Order 13858 “Strengthening Buy-American Preferences for Infrastructure Projects,” FEMA encourages recipients to use, to the greatest extent practicable and consistent with the law, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States, in Public Assistance and Hazard Mitigation Grant Program eligible public infrastructure repair and construction projects affecting surface transportation, ports, water resources including sewer and drinking water, and power. Such preference must be consistent with the law, including cost and contracting requirements at 2 CFR Part 200.

F. CONTROLLING AUTHORITIES. This Agreement is subject to the following governing authorities:

1. The Stafford Act, its implementing regulations contained in Title 44 of the C.F.R., and FEMA policy and guidance.
2. The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards set forth at 2 C.F.R. Parts 200 and 3002.

FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU

3. The DHS Standard Terms and Conditions in effect on the date of the Declaration, available at https://www.dhs.gov/sites/default/files/publications/fy_19_dhs_standard_terms_and_conditions_version_9.2_dated_04-17-2019_0.pdf which are incorporated by reference into this Agreement.

III. TYPES OF FEDERAL ASSISTANCE

The President may authorize any of the following federal assistance programs and **Attachment 3** to this Agreement sets forth the specific federal assistance programs authorized for this Declaration.

- A. **PUBLIC ASSISTANCE (PA)**. The following terms apply when the PA Program is authorized and FEMA makes a PA grant award to the Territory:

1. **Cost Share**. FEMA funding for PA project costs (which do not include management costs) will be limited to 75 percent of total eligible costs after appropriate reductions (such as for insurance), except as may be provided for in **any subsequent** cost share amendments to the Declaration, which will be incorporated into this agreement by amendment. The Territory agrees to make available the non-federal share of PA project costs.
2. **Management Costs**. FEMA funding for PA management costs will be 100 percent of the total eligible management costs, which will be limited to not more than 12 percent of the total award amount. Of this amount, the Territory may use up to 7 percent and a subrecipient may use up to 5 percent of the subrecipient's total award amount. The "total award amount" means the actual eligible PA project costs, including both the federal and non-federal share, and after appropriate reductions (such as for insurance) and excluding management costs. There is no non-federal share of PA management costs.
3. **Direct Federal Assistance**. When Direct Federal Assistance is requested and the assistance is provided:
 - a. The Territory will:
 - i. Provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work;
 - ii. Hold and save the United States free from damages due to the requested work, and will indemnify the Federal Government against any claims arising from such work;
 - iii. Provide reimbursement to FEMA for the non-federal share of the cost of such work; and

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- iv. Assist the performing federal agency in all support and local jurisdictional matters.
 - b. FEMA will bill the Territory for the non-federal share of Direct Federal Assistance provided and the Territory agrees to pay the non-federal share pursuant to the timeframes set forth in the letter or other correspondence transmitting the bill.
 - 4. Debris Removal. When debris removal is authorized, the Territory agrees to indemnify and hold harmless the United States for any claims arising from the removal of debris or wreckage for the Declaration. The Territory agrees that debris removal from public and private property will not occur until an unconditional authorization for the removal of debris is provided.
 - 5. Additional Terms and Conditions. The attached **Public Assistance Programmatic Addendum** includes additional terms and conditions for the implementation of the PA Program as applicable and PA grant performance goals.
- B. **INDIVIDUAL ASSISTANCE (IA)**. When the Declaration authorizes IA overall or specific IA programs and FEMA makes an IA grant award to the Territory, the following terms apply:
 - 1. General. FEMA may award grant funds to the Territory for the IA programs authorized under the Declaration and requested by the Territory and, for Direct Temporary Housing and Permanent Housing Construction, may provide direct assistance.
 - 2. Other Needs Assistance. When the Declaration authorizes the IHP and FEMA provides ONA to individuals and households, the Territory agrees to make available its 25 percent share of any ONA that is provided under Section 408(e) of the Stafford Act (codified as amended at 42 U.S.C. § 5174(e)).
 - a. FEMA Option. When FEMA administers ONA under the FEMA Option, FEMA will bill the Territory monthly for the cost share. The Territory agrees to pay the amount billed within 30 days of receipt.
 - b. Joint Option. If the Territory administers ONA under the Joint Option, a cooperative agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individuals and households and actual administrative costs in accordance with Section 408 of the Stafford Act (codified as amended at 42 U.S.C. § 5174) and 44 C.F.R. § 206.120. Administrative costs will equal up to 5 percent of the ONA grant.

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- c. Territory Option. If the Territory administers ONA under the Territory Option, a grant agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individuals and households and administrative costs allowed under Section 408 of the Stafford Act (codified as amended at 42 U.S.C. § 5174) and 44 C.F.R. § 206.120. Administrative costs will equal up to 5 percent of the actual eligible ONA payments made to individual and households, including both the federal and non-federal share.

3. Additional Terms and Conditions. Additional terms and conditions regarding implementation of the IHP and other applicable IA Programs including IA grant performance goals and administrative plans may be included in an attached **IA Programmatic Addendum**.

C. **HAZARD MITIGATION GRANT PROGRAM (HMGP).** When the Declaration authorizes the HMGP and FEMA makes a HMGP award to the Territory, the following provisions apply:

- 1. Total Funding. Total federal contributions are based on the estimated aggregate amount of grants to be made under the Stafford Act for this major disaster (less any associated administrative costs), and will be 15 percent for the first \$2,000,000,000 or less of such amounts; 10 percent of the portion of such amounts over \$2,000,000,000 and not more than \$10,000,000,000; and 7.5 percent of the portion of such amounts over \$10,000,000,000 and not more than \$35,333,000,000.
- 2. Cost Share. FEMA funding for total HMGP costs, excluding management costs, will be limited to no more than 75 percent of total eligible costs after appropriate deductions. The Territory agrees to make available the 25 percent non-federal share of HMGP and, at its request, may provide a greater non-federal share of an activity cost.
- 3. Management Costs
 - a. FEMA funding for HMGP management costs will be 100 percent of the total eligible management costs, which will be limited to 15 percent of the total award amount. The Territory may use up to 10 percent of the total award amount and subrecipients may use up to 5 percent of the subrecipient's total award amount. There is no non-federal share of HMGP management costs
 - b. The "total award amount" means the actual eligible HMGP activity costs, including both the federal and the non-federal share, and after appropriate reductions (such as for insurance) and excluding management costs. For the Territory, this is the total of the federal contribution and the required nonfederal contribution under the HMGP

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

grant award. For a subrecipient, this is the federal contribution and nonfederal contribution that the Territory has identified as contributing to meet the nonfederal share of the HMGP grant award. In the case where the non-federal share for the entire HMGP grant award exceeds the required 25 percent, those excess non-federal contributions are not included in the total award amount and are not included in the calculation of management costs.

4. Program Administration by Territories. If the Territory requests and FEMA approves the Territory's request for inclusion in the Program Administration by States (PAS) Pilot Program, FEMA and the Territory will execute an Operating Agreement that will be included in the attached **HMGP Programmatic Addendum**.
5. Additional Terms and Conditions. Additional terms and conditions regarding implementation of HMGP, including performance goals, may be included in the attached **HMGP Programmatic Addendum**.

IV. FUNDING

A. PAYMENT PROCESS

1. Payment System. FEMA will pay the Territory using the U.S. Department of Health and Human Services Payment Management System (HHS/Smartlink).
2. Payments. Payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (*Rules and Procedures for Efficient Federal-State Funds Transfers*) and Treasury Financial Management Manual, Volume 1, Part 4A-2000.
3. IA Overpayments. When FEMA identifies an overpayment under an IA grant award, subject to the exhaustion of appeals, FEMA will deobligate the funds from the Territory's HHS/Smartlink account. If there are insufficient funds in the account, the Territory will have 30 days to reimburse the HHS/Smartlink account. At that time, if there are still insufficient funds in the subaccount, FEMA will refer the amount to the FEMA Finance Center (FFC) for collection.
4. PA and HMGP Overpayments. FEMA will use a "single obligation" system to process payments through a subaccount for each subaward under PA and HMGP. When FEMA identifies an overpayment as a potential debt, the Territory will have 60 days to appeal that initial determination. Upon exhaustion of appeal rights, the Territory will have 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center (FFC) for collection. The Territory may resolve the amount owed by paying FEMA directly. It may also deposit the

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the Territory may request administrative offset of the amount owed against identifiable, allowable, allocable, and reasonable costs under the same subaward which have not yet been reimbursed by FEMA.

5. No Property Interest. The Territory and subrecipients have no property interest in the funds made available through the HHS/Smartlink account. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the Territory in HHS/Smartlink due to grant amendments, partial or full grant terminations, closeouts, or other reasons.

B. AVAILABILITY OF FUNDING. FEMA and the Territory agree to take measures to deliver assistance to individuals, households, governments, and private nonprofits as expeditiously as possible consistent with federal laws and regulations.

1. This Agreement does not comprise an award of any type of assistance authorized for the Declaration or as described in Part III, Types of Federal Assistance, above and this Agreement does not obligate any federal funding. Rather, FEMA will separately make such award decisions for the assistance authorized for the Declaration.
2. If FEMA decides to make an award of federal assistance, such assistance will be made available within the limits of funds available from Congressional appropriations for such purposes.
3. FEMA may, in its sole discretion, if necessary because of limited funds, give first priority to assistance for individuals and households, emergency work for protection of public health and safety, and administrative costs for managing the disaster programs. FEMA will provide other financial assistance when, and if, funds become available and will generally provide them in the order the claims are received.

V. REPORTING

A. FEDERAL FINANCIAL REPORTS

1. Initial and Quarterly Financial Reports
 - a. The Territory must submit complete and accurate Federal Financial Reports (Standard Form 425) to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date for each program (PA, HMGP, and the various IA programs). The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the Territory. Subsequent reporting requirements will not be waived. The Territory must submit quarterly

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

financial status reports thereafter until closeout of the federal grant award for each program funded. Reports are due on January 30, April 30, July 30, and October 30.

- b. The Territory must indicate in the remarks section on the quarterly financial report each time it has submitted a final expenditure report for a project or subaward as detailed in paragraph V.B below. The information must include the name of the subrecipient, the project number, and the date on which the Territory submitted the project closeout report. If it is the last project for a subrecipient, then the Territory must also note that the quarterly report reflects the last expenditures of that subrecipient.
- 2. Final Federal Financial Report. The Territory must submit a complete and accurate final Federal Financial Report (SF 425), no later than 90 days after each program's federal grant award performance period expiration date.

B. FINAL EXPENDITURE REPORT FOR PROJECT COMPLETION

- 1. PA Large Project Final Expenditure Report
 - a. The Territory must submit a payment of claim to FEMA for each PA large project as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The Territory must submit the final payment of claim for a PA large project within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
- 2. PA Small Project Final Expenditure Report
 - a. The Territory must provide a small project certification for itself and each subrecipient as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The Territory must submit the certification within 180 days from the earlier of the date that the non-Federal entity completes its last small project or the latest project completion deadline of a small project.
- 3. PA Management Cost Project Final Expenditure Report
 - a. The Territory must submit a payment of claim to FEMA for each subrecipient's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the subrecipient's last non-management cost PA project for the Declaration;

FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU

- ii. 180 days after the latest project completion deadline of a subrecipient's non-management cost PA project for the Declaration; or
 - iii. Eight years from the date of the Declaration.
 - b. The Territory must submit a payment of claim to FEMA for the Territory's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the last non-management cost PA project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a non-management cost PA project for the Declaration;
 - iii. Eight years from the date of the Declaration.
- 4. HMGP Project Final Expenditure Report
 - a. The Territory must submit a payment of claim to FEMA for each HMGP project as required by FEMA regulations and guidance, including 44 C.F.R. § 206.438(d).
 - b. The Territory must submit the final payment of claim within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
- 5. HMGP Management Cost Project Final Expenditure Report
 - a. The Territory must submit a payment of claim to FEMA for each subrecipient's HMGP management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the subrecipient's last non-management cost HMGP project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a subrecipient's non-management cost HMGP project for the Declaration; or
 - iii. Eight years from the date of the Declaration
 - b. The Territory must submit a payment of claim to FEMA for the Territory's HMGP management cost project within 180 days after the earlier to occur of the following:

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- i. 180 days after work is completed on the last non-management cost HMGP project for the Declaration;
 - ii. 180 days after the latest performance period of a non-management cost HMGP project for the Declaration; or
 - iii. Eight years from the date of the Declaration
6. IA Final Expenditure Report. If the Territory issues a subaward under the Disaster Case Management Program, Crisis Counseling Program, ONA, Direct Temporary Housing, or Permanent Housing Construction grant award, then it must submit a payment of claim to FEMA for that subaward within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
7. Governmental Subrecipients
 - a. FEMA will confirm the reports described in paragraphs 1, 2, 3, 4, 5, 6 as the final expenditure report only if the Territory has submitted all outstanding information and certifications required by applicable regulations and FEMA policy and guidance and the report is complete and accurate.
 - b. The confirmed, complete, and accurate project closeout report is the “final expenditure report for project completion as certified by the grantee” for the purposes of applying Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)).

C. PERFORMANCE REPORTS

1. Initial and Quarterly Reports. The Territory must submit performance/progress reports in compliance with each program identified under this Agreement to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date. The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the grantee. Subsequent reporting requirements will not be waived. The Territory must submit quarterly performance/progress status reports thereafter until the grant performance period ends. Reports are due on January 30, April 30, July 30, and October 30.
2. Report Content. The Territory must include in its quarterly performance/progress reports (OMB Form 1660-0017 PA and OMB Form 1660-0076 HMGP for PA and HMGP, respectively) a status of project/subaward completion, amount of expenditures, and amount of payment for advancement or reimbursement of costs for each project/subaward funded under each of the programs authorized under this Agreement, including for properties purchased for open space under the HMGP.

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

3. Project Cost Overruns. The Territory must submit project cost overruns requiring additional obligations to FEMA for review and approval. Where review and approval is not sought before incurring the costs of an overrun, there is no assurance that FEMA will reimburse such costs. In compliance with 44 C.F.R. § 206.438, the Territory must submit project cost overruns requiring additional HMGP obligations to FEMA for review and approval before incurring costs.
4. Final Performance Report. The Territory must submit a final performance/progress report 90 days from each program's grant award performance period expiration date that addresses all approved activities and the performance goals outlined in the federal award.

D. ENFORCEMENT. FEMA may suspend drawdowns, impose other special conditions, or take other authorized action pursuant to 2 C.F.R. § 200.338 (*Remedies for Noncompliance*) if the Territory does not submit accurate and timely reports. This may include, among things, the administrative closeout of a grant and/or any projects under a grant when the Territory is not responsive to reasonable efforts FEMA makes to collect required reports needed to complete closeout. Administrative closeout is a unilateral mechanism by FEMA to move forward with project or grant closeout using available grant information in lieu of final reports. This can require FEMA to make cash or cost adjustments and ineligible cost determinations, which may result in identifying a debt owed to FEMA.

E. RECORDS RETENTION

1. Territory Requirement. The Territory must retain records for 3 years, except in certain rare circumstances described in 2 C.F.R. § 200.333 (*Retention requirements for records*), from the date it submits the final Federal Financial Report (SF 425) to FEMA in compliance with 2 C.F.R. § 200.333, notwithstanding the time period prescribed for subrecipients in subsection 2, Subrecipient Requirement, below. If FEMA administratively closes the grant where no final SF-425 was submitted, FEMA uses the date the grant was administratively closed as the start date for the 3-year record retention period.
2. Subrecipient Requirement. The Territory must require subrecipients to retain project or subaward records for at least 3 years from the date that the Territory submits to FEMA the final expenditure report for a project or subaward as described above in paragraph V.B. If, however, there is any litigation, claim, negotiation, audit, request for information, or other action involving the project or subaward that starts before that date, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the 3-year period, whichever is later.

VI. RECOVERY OF FUNDS

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- A. **GENERAL.** FEMA may disallow costs and recover funds based on the results of audit or review during or after performance of the award to ensure compliance with the terms of the Agreement and award document. FEMA is required to recover funds when the Recipient or subrecipient has ineligible underruns (for example, actual costs for a PA large project are less than the amount FEMA awarded based on initial estimates); knowingly or negligently withholds or misrepresents material information; fails to complete work and comply with the terms of this Agreement or the approved award; expends federal funds in error; or incurs costs that are unreasonable or otherwise disallowed. If after exhaustion of appeal rights, FEMA determines a debt is owed, the Territory has 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center for collection. The Territory may do so by directly paying FEMA. The Territory may also deposit the amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the Territory may request to substitute unallowable costs for other costs that are allowable (e.g., necessary, allocable, and reasonable under the same award and have not yet been reimbursed by FEMA).
- B. **DUPLICATION OF BENEFITS**
1. **General.** The Territory must take all actions necessary and reasonable to ensure that all who receive federal assistance are aware of their responsibility to repay federal assistance that is duplicated by amounts available from insurance or any other source for the same purpose. FEMA may at any time pre-award or post-award adjust the level of funding provided to account for financial assistance provided from any other source for the same purpose as the federal assistance or to account for benefits available for the same purpose from another source, irrespective of whether they are actually received.
 2. **Insurance.** Within his/her authorities, the Governor must ensure, through the Territory agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster survivors and others who receive federal assistance. The Territory must also take all reasonable steps to ensure that disaster survivors are aware of procedures for filing insurance claims, and are informed of any territory procedures instituted for assisting insured disaster survivors.
- C. **COOPERATION.** The Territory agrees, on its behalf and on behalf of its political subdivisions and others that receive federal assistance, to cooperate with the Federal Government in seeking recovery of federal assistance against any party or parties whose intentional acts or omissions or whose negligence or other tortious conduct may have caused or contributed to the damage or hardship for which federal assistance was provided under this Agreement. If applicable, FEMA will treat recovered funds as duplicated benefits available to the Recipient/subrecipient in

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

accordance with Section 312 of the Stafford Act (codified as amended at 42 U.S.C. § 5155).

- D. TERRITORY RESPONSIBILITIES.** The Territory is responsible for recovering federal assistance expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
1. The Territory must adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF 425.
 2. The Territory must designate on its quarterly progress reports the applicants/subrecipients from which they have not processed recoveries but from which recoveries are due FEMA.
 3. The Territory must notify FEMA of any potential debt as a result of federal funds expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
 4. The Territory must report all cases of suspected fraud to the DHS Office of Inspector General. The Territory must cooperate with any investigation conducted by the DHS Office of Inspector General.
 5. The Territory must cooperate with FEMA regarding any and all lawsuits that may result from the Territory or FEMA's attempt to recover funds or disallow costs.

E. STATUTE OF LIMITATIONS

1. General. The 3-year statute of limitations limiting FEMA's ability to initiate an administrative action to recover funds paid as provided for in Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)) begins with:
 - a. PA and HMGP. The Territory's submission of final expenditure report described in paragraph V.B.1, 2, 3, 4, and 5.
 - b. IA Subawards. The Territory's submission of the final expenditure report described in paragraph V.B.6.
 - c. IA Grant Awards. The Territory's submission of the Final Federal Financial Report described in paragraph V.A for any portion of work under an IA grant completed by the Territory directly and not through a subaward.
2. Initiation of an Administrative Action to Recover Payment. The initiation of an administrative action to recover payment includes FEMA's written notice to the Territory or a subrecipient of a questioned or disallowed cost or improper payment (including a request for information concerning such

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

cost or payment) and written notice to the Territory or a subrecipient of a FEMA or 3rd party review or audit.

- F. **REFUNDS, REBATES AND CREDITS.** The Territory must transfer to FEMA the appropriate share, based on the federal support percentage, of any refund, rebate, credit or other amounts arising from the performance of this agreement. The Territory must take necessary action to promptly collect all monies due or which may become due and if applicable, to cooperate with the Federal Government in any claim or suit in connection with amounts due.

VII. CONSTRUCTION REQUIREMENTS

The Territory must ensure that all applicable federal, territory, and local permits and approvals are obtained and all permit conditions are addressed before the start of any construction activity, including FEMA and Recipient/subrecipient compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other applicable environmental laws and executive orders. All construction should be in accordance with approved permits, projects plans and specifications, applicable building codes, and program guidance.

VIII. PERFORMANCE PERIODS

- A. **PROGRAM/GRANT AWARD.** The Territory will complete all grant award activities, including all projects and/or activities approved under each grant award, within the time period prescribed in FEMA regulations, program guidance, and the award documents.
- B. **EXTENSIONS.** The Territory will include with any written request for an extension information and documentation to support the amendment and a schedule for completion as detailed in federal regulations and FEMA guidance and policies. FEMA may approve subsequent work, monetary increase amendments, or activity time extension amendments only if the Territory submits all financial and performance reports to the Regional Office. FEMA will only approve extensions to the federal grant award period of performance or project completion timelines (if applicable) that comply with program regulatory timeframes. FEMA will not approve extensions for delays caused by lack of non-federal share funding.

IX. REMEDIES FOR NONCOMPLIANCE

FEMA may take action as it determines appropriate under the circumstances including but not limited to withholding of payments, disallowance of costs, suspension or termination of the award if the Territory or subrecipient fails to comply with applicable Federal statutes, regulations, or the terms of this Agreement pursuant to 2 C.F.R. § 200.338 (Remedies for Noncompliance).

X. ATTACHMENTS, PROGRAMMATIC ADDENDUMS AND AMENDMENTS

- A. **ATTACHMENTS.** Attached and made part of this Agreement are the following Attachments which contain terms and conditions applicable to all assistance provided under this Agreement:

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

Attachment 1: List of Territory Certification Officers

Attachment 2: Certification Regarding Lobbying

Attachment 3: List of Designated Programs and Areas

- B. PROGRAMMATIC ADDENDUMS.** Attached and also made part of this Agreement are the following Programmatic Addendums, which unless indicated otherwise in **Attachment 1** may be signed or agreed to on behalf of the Territory by the Governor's Authorized Representative (GAR) listed in **Attachment 1**, and are included on a case by case basis depending on the assistance designated and whether additional terms and conditions for implementation of specific assistance programs are needed.

XI. AMENDMENTS. This Agreement may be amended at any time by written approval of both parties. Executed amendments will be numbered and appended to this agreement in the order that they are executed. Electronic copies of executed amendments will be transmitted to the FEMA Declarations Unit.

XII. SIGNATURES AND EFFECTIVE DATE

- A. COUNTERPART SIGNATURES.** This Agreement may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a .pdf format data file, such signature will create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or .pdf signature page were an original thereof.
- B. EFFECTIVE DATE.** This FEMA-Territory Agreement becomes effective on the date of signature by the last party.

AGREED:

Lourdes A. Leon Guerrero
Governor
Territory of Guam

Robert J. Fenton
Regional Administrator
FEMA Region IX

Date

Date

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

**ATTACHMENT 1
LIST OF TERRITORY CERTIFICATION OFFICERS**

1. The Governor hereby certifies that Anthony M. Babauta is the Governor's Authorized Representative (GAR) empowered to execute on behalf of the Territory all necessary documents for federal assistance, including approval of subawards and certification of claims for Public Assistance. Tim P. Aguon is the Alternate GAR and is similarly empowered.
2. The Governor hereby certifies that Charles V. Esteves and Leo Rustum J. Espia are the Territorial Coordination Officer (TCO) and Alternate TCO, respectively, who will act in cooperation with the Federal Coordinating Officer under this Declaration.
3. The GAR, named above, is responsible for Territory performance of hazard mitigation activities under this Agreement and, further, Leo Rustum J. Espia is designated the Territory Hazard Mitigation Officer for the purposes of such hazard mitigation activities.
4. The Governor hereby certifies that Marie T. Quenga and Kenny R. Artero are the representatives of the Territory authorized to receive donations or loans of surplus property on behalf of the Territory and to execute certification, agreements, and other necessary documents with regard thereto.
5. The Governor hereby certifies that Ciriaco S. Sanchez and Marie T. Quenga are the Territory officials authorized to execute compliance reports, carry out compliance reviews, and distribute informational materials as required by FEMA to ensure that all recipients of federal assistance are in full compliance with FEMA nondiscrimination regulations (44 C.F.R. § 206.11, *Nondiscrimination in disaster assistance*).
6. The Governor hereby certifies that Claudia S. Acfalle, Marie T. Quenga, and Ciriaco S. Sanchez are the Territory officials who will execute compliance reports, carry out carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
7. The GAR or Alternate GAR will submit a signed memo to the FEMA Regional Office stating any change in Territory officials.

Restrictions on approval authority of the above named officials: None

Agreed:

Lourdes A. Leon Guerrero
Governor

Date

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

**ATTACHMENT 2
CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 C.F.R. Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Anthony M. Babauta, Governor's Authorized Representative

Name and Title of Authorized Representative

Signature

Date

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

ATTACHMENT 3

LIST OF DESIGNATED AREAS AND PROGRAMS

Eligible applicants are eligible to apply for emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the Territory of Guam.

UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

April 30, 2020

VIA ELECTRONIC MAIL: romeogfx@gmail.com

Romeo Carlos
1455 Aguilar Road,
Yona, Guam 9569215-4912

Dear Mr. Carlos:

I am writing in response to your request for information dated April 24, 2020, addressed to Governor Lourdes Leon Guerrero, in which you seek:

“1) All documents related to procurement contracts, specifically related to Guam’s 2020 public health emergency, pursuant to Executive Order 2020-03, and authorized by governor Lourdes Leon Guerrero, and/or lieutenant governor Josh Tenorio and/or any agent or person(s) authorized to negotiate and sign any such contracts and/or agreements on behalf of the government of Guam, including:

a) E-mails, text messages, and any digital/electronic communications relating to signed contracts and/or agreements for Covid-19 pandemic response services, including but not limited to, contracts, agreements, and Covid-19-related expenses incurred since March 1, 2020 for:

i. Guam Memorial Hospital, Dept. of Public Health and Social Services, public and private clinics, and similar facilities;

ii. Expenses, contracts, and agreements establishing temporary public medical facilities, to increase Covid-19 treatment, quarantine, and response capacity, and laboratory services, including contracts, agreements, and expenses related to construction and maintenance costs of said facilities;

iii. Contracts, agreements, and expenses associated with providing Covid-19 testing, including serological testing; handling and transportation of testing;

iv. Contracts, agreements, and expenses for emergency medical response expenses, including medical transportation contracts, agreements, and expenses related to Covid-19; including, but not limited to transport of quarantined arrivals from ports of

entry, patients, and medical and government personnel and staff engaged in Covid-19-related activities;

v. Contracts, agreements, and expenses for the acquisition and stockpiling of Medical supplies, including personal protection equipment, gowns, gloves, medicines and coronavirus/Covid-19 test kits (swabs and/or antibody test kits), tents, beds, and ventilators;

vi. Sanitation chemicals supplies, cleaning and laundry services;

vii. Quarantine facility and hotel services for government-mandated quarantine, including itemized cost of contracted daily room rate for hotel contracts;

viii. Contracts, agreements, and expenses for Covid-19-related costs for the maintenance of Dept. of Correction facilities, and other jails, prisons, and/or detention centers for youths and adults, including as relates to sanitation and improvement of social distancing measures, medical services and transportation of confined populations;

ix. Contracts, agreements, and expenses for care, sheltering, testing and transportation of Guam's homeless populations provided to mitigate, and address, Covid-19 effects and impacts, and to enable compliance with Covid-19 public health precautions.

b) Contracts, agreements, and proposals either wholly or partially implemented for Communication services, public service awareness programs, and content development for the territorial government public health orders, guidelines, and all such collateral related to Covid-19 orders and governmental communications, including but not limited to communications campaign development, creation, production, printing, uploading, dissemination and maintenance of all communication portals, sites and distribution points for said information, printed, digital, and electronic;

c) Contracts, agreements, and proposals, wholly or partially implemented, for expenses associated with the acquisition and distribution of medical and protective supplies, including, but not limited to: sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the Covid-19 public health emergency

d) Any contracts and/or agreements entered into for the disinfection of public areas, government facilities, and spaces, e.g., the Guam International Airport, nursing homes and/or Senior centers, in response to the Covid-19 public health emergency;

e) Contracts and/or agreements entered into by the government of Guam, and expenses associated with, any technical assistance provided to

local authorities or other entities on mitigation of Covid-19-related threats to public health and safety.

2) Electronic/digital or paper copy of all pandemic-related contracts for any goods and services, medical and non-medical, procured since March 1, 2020 to date, copies of all such contracts, and any proposals for goods or services that have been wholly, or partially implemented; including:

- a. the names and physical address of the vendor companies entered into contract with by the government of Guam;
- b. the names of the principals and shareholders of said vendor companies;
- c. the contract value, terms and length of contract, and type of service or goods procured;
- d. the names and titles of all government officials, agents and/or individuals acting in the capacity as a representative or agent for the government or a government official or agency, and the terms of compensation for any such agency; as well as,
- e. any and all requests for proposals, request for bids, request for interest, public notification dates and contracts for such requests, and/or any citation for the abrogation and/or exemption from Guam procurement laws involved in the acquisition and consignment of any pandemic response-related vendor contracts;

3) The names of all government officials and/or agents who exercised custody over said communications and contracts, and dates for such custody;

4) Electronic/digital or paper copies of all pandemic-related, government of Guam-approved contracts and agreements submitted by Homeland Security and the Office of Civil Defense to the Federal Emergency Management Agency (FEMA) for review and accountability of same."

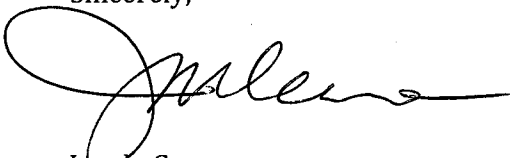
In response to item #3, enclosed are the following documents:

- FEMA-Territory Agreement FEMA-3466-EM-GU
- FEMA-Territory Agreement FEMA-4495-DR-GU

In order to respond to the remaining items in your request, and pursuant to 5GCA 10103(e), it is necessary for us to extend the time to respond to your request for information by up to 10 days. A response will be provided to you no later than May 10, 2020.

Please let me know if you have any questions or concerns.

Sincerely,



Janelle Carrera
Director of Communications



OFFICE OF LEGAL COUNSEL

Ufisinan I Maga'hågan Guåhan
Office of the Governor of Guam

LOURDES A. LEON GUERRERO
Governor of Guam

JOSHUA F. TENORIO
Lieutenant Governor of Guam

Via Pick-Up

March 20, 2020

LEO RUSTUM J. ESPIA

Acting Deputy Administrator
GUAM HOMELAND SECURITY
OFFICE OF CIVIL DEFENSE
221B Chalan Palasyo
Agana Heights, Guam 96910

Re: FEMA-Territory Agreement (U.S. Department of Homeland Security, Region IX)

Dear Mr. Espia:

The following packet is transmitted with the signatures of *I Maga'hågan Guåhan* and the Chief of Staff:

FEMA-Territory Agreement: FEMA-3466-EM-GU

Any questions or concerns can be sent directly to the Legal Counsels via email (haig.huynh@guam.gov or sophia.diaz@guam.gov) or call 475-9475/9476.

Senseramente,

HAIG T. HUYNH

Legal Counsel

Enclosure(s): Agreement

cc via email: *Maga'hågan Guåhan*
Sigundo Maga'låhen Guåhan



FEMA

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

I. PURPOSE AND BACKGROUND

On March 13, 2020, the President declared that an emergency exists nationwide as a result of Coronavirus Disease 2019 (COVID-19) beginning on January 20, 2020 and continuing. FEMA will provide assistance to the Territory of Guam through this FEMA-Territory Agreement (Agreement) under this emergency (Declaration) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (Stafford Act), in accordance with 44 CFR § 206.44. The number for this Agreement is FEMA-3466-EM. This Agreement between the United States of America through the Regional Administrator, Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS) or his/her delegate, and the Territory of Guam (Territory or Recipient) governs all federal assistance FEMA provides the Territory under the Declaration.

II. GENERAL PROVISIONS

- A. **GRANT AWARD PACKAGE.** Any federal grant award (which includes a cooperative agreement for purposes of this Agreement) package issued under this Agreement will consist of the Declaration, this Agreement, and the *Application(s) for Federal Assistance* (Standard Form (SF) 424), including *Assurances- Non-Construction Programs* (SF-424B) and also the *Assurances - Construction Programs* (SF 424D) when applicable, submitted by the Territory for each grant program provided under the Declaration and this Agreement.
- B. **FEMA RESPONSIBILITIES.** FEMA may provide federal assistance to the Territory or residents of the Territory, if applicable, funds in the form of federal grant assistance or direct federal services to support the activities and programs authorized under the Stafford Act and the President's Declaration (federal assistance) in accordance with this Agreement.
- C. **TERRITORY RESPONSIBILITIES.**
1. The Territory agrees to comply with the federal grant award terms and conditions set forth in the Declaration, this Agreement, individual projects, records of environmental consideration, and the Territory Administrative Plans in place for each grant award.
 2. The Territory agrees to lead, manage and drive the overall recovery process and coordinate recovery activities and technical support by setting appropriate territory policies. The Territory will coordinate with local, Tribal and Federal governments

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

and agencies, private businesses and nonprofit organizations to lead and coordinate territory recovery planning and assistance to impacted communities.

3. The Territory agrees to be the “Recipient” for all federal financial assistance provided under the Stafford Act and this Agreement, with the exception of Housing Assistance or for Other Needs Assistance when administered by FEMA rather than by the Territory (i.e., the “the FEMA option”) under the Individuals and Households Program, if applicable. The Territory also serves as the “pass-through entity” with respect to the Territory’s role in providing subawards and administering grant assistance provided to sub-recipients.
 - a. Recipient and pass-through entity have the same meaning as “Grantee,” as used in governing statutes, regulations, and FEMA guidance.
 - b. A recipient is also a “non-federal entity” for grants administration purposes.
4. The Territory will serve as the “pass-through entity” with respect to the Territory’s role in providing subawards and administering grant assistance provided to subrecipients. As the pass-through entity, the Territory agrees to comply with, and will require all subrecipients to comply with, the requirements of all applicable laws and regulations, including the Stafford Act, Title 44 of the Code of Federal Regulations (CFR) (*Emergency Management and Assistance*), 2 CFR Part 3002 (implementing 2 CFR Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*)), and applicable FEMA policies and guidance.
 - a. The term “subrecipient” has the same meaning as “subgrantee,” as used in governing statutes, regulations, and FEMA guidance.
 - b. A subrecipient is also a “non-federal entity” for grants administration purposes.

D. CERTIFICATION AND WAIVERS.

1. **Attachment 1** to this Agreement lists the Territory officials named by the Governor as authorized to execute certifications and otherwise to act on behalf of and to legally bind the Territory are listed on.
2. **Attachment 2** to this Agreement is the Territory’s Certification Regarding Lobbying. This certification complies with the Lobbying Prohibitions in the DHS Standard Terms and Conditions and with the FEMA regulations found at 44 CFR Part 18 (*New Restrictions on Lobbying*).
3. The Governor certifies that appropriate action has been taken under Territory a law and the emergency plan has been executed.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

4. The Territory waives any consultation process under Executive Order 12372 (*Intergovernmental review of Federal programs*) and 44 CFR Part 4 (*Intergovernmental Review of Federal Emergency Management Agency (FEMA) Programs and Activities*) for grants, loans, or other financial assistance under the Stafford Act for the Declaration .

E. FEDERAL ASSISTANCE.

1. Federal assistance is limited to activities necessary to alleviate damage, loss, hardship, or suffering resulting from the incident that took place during the incident period, except that reasonable expenses that were incurred in anticipation of and immediately preceding such event may be eligible.
2. Federal assistance under the Stafford Act and this Agreement is limited to those areas and programs designated by the President or FEMA for this major disaster or emergency, which are listed in **Attachment 3** to this Agreement and are incorporated by reference.
3. All scopes of work and costs approved as a result of this Agreement, whether as estimates or final costs approved through subawards, project worksheets, or otherwise, will incorporate by reference the terms of this Agreement and must comply with applicable laws, regulations, policy and guidance in accordance with this Agreement.
4. Pursuant to Executive Order 13858 "Strengthening Buy-American Preferences for Infrastructure Projects," FEMA encourages recipients to use, to the greatest extent practicable and consistent with the law, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States, in Public Assistance eligible public infrastructure repair and construction projects affecting surface transportation, ports, water resources including sewer and drinking water, and power. Such preference must be consistent with the law, including cost and contracting requirements at 2 CFR Part 200.

F. CONTROLLING AUTHORITIES. This Agreement is subject to the following governing authorities:

1. The Stafford Act and its implementing regulations contained in Title 44 of the Code of Federal Regulations (CFR), and FEMA policy and guidance.
2. "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards," 2 CFR Parts 200 and 3002.
3. The DHS Standard Terms and Conditions for grants in effect on the date this event was declared, available at <http://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions> which are hereby incorporated by reference.

III. TYPES OF FEDERAL ASSISTANCE

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

The President may authorize any of the following federal assistance programs and **Attachment 3** to this Agreement sets forth the specific federal assistance programs authorized for this Declaration.

A. PUBLIC ASSISTANCE (PA). When the Declaration authorizes Emergency Work under the PA Program, and FEMA makes a PA grant award to the Territory, the following terms apply:

1. Cost Share. FEMA funding for PA project costs (which do not include management costs) will be limited to 75 percent of total eligible costs after appropriate reductions, except as may be provided for in any subsequent cost share amendments to the Declaration. The Territory agrees to make available the non-federal cost share of PA.
2. Direct Federal Assistance. When Direct Federal Assistance is requested and the assistance is provided:
 - a. The Territory will:
 - i. Provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work;
 - ii. Hold and save the United States free from damages due to the requested work, and will indemnify the Federal Government against any claims arising from such work;
 - iii. Provide reimbursement to FEMA for the non-federal share of the cost of such work; and
 - iv. Assist the performing federal agency in all support and local jurisdictional matters.
 - b. FEMA will bill the Territory for the non-federal cost share of Direct Federal Assistance provided and the Territory agrees to pay the non-federal share pursuant to the timeframes set forth in the letter or other correspondence transmitting the bill.
3. Debris Removal. When debris removal is authorized, the Territory agrees to indemnify and hold harmless the United States for any claims arising from the removal of debris or wreckage for this major disaster or emergency. The Territory agrees that debris removal from public and private property will not occur until an unconditional authorization for the removal of debris is provided.

B. INDIVIDUAL ASSISTANCE (IA). When the Declaration authorizes IA programs, and FEMA makes an IA grant award to the Territory, the following terms apply as applicable:

1. General. FEMA may award grant funds to the Territory for the IA programs authorized under the Declaration and requested by the Territory and, for Direct

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

Temporary Housing and Permanent Housing Construction, may provide direct assistance.

2. Other Needs Assistance. When the Declaration authorizes the Individual and Households Program (IHP), and FEMA provides IHP assistance including Other Needs Assistance (ONA) to individuals and households, the Territory agrees to make available its 25 percent share of any ONA that is provided under Section 408(e) of the Stafford Act (42 U.S.C. § 5174(e)).
 - a. FEMA Option. When FEMA administers ONA under the FEMA Option, FEMA will bill the Territory monthly for the cost share. The Territory agrees to pay the amount billed within 30 days of receipt.
 - b. Joint Option. If the Territory administers ONA under the Joint Option, a Cooperative Agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individual and households and actual administrative costs in accordance with Section 408 of the Stafford Act (42 U.S.C. §5174) and 44 C.F.R. §206.120. Administrative costs will equal up to 4 percent of the ONA grant.
 - c. Territory Option. If the Territory administers ONA under the Territory Option, an ONA Grant Agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individual and households and actual administrative costs in accordance with Section 408 of the Stafford Act (42 U.S.C. §5174) and 44 C.F.R. §206.120. Administrative costs will equal up to 4 percent of the ONA grant.
3. Additional Terms and Conditions. Additional terms and conditions regarding implementation of the IHP and other applicable Individual Assistance (IA) Programs including IA Grant performance goals may be included in an attached **IA Programmatic Addendum.**

IV. FUNDING

A. PAYMENT PROCESS.

1. Payment System. FEMA will pay the Territory using the U.S. Department of Health and Human Services Payment Management System (HHS/Smartlink).
2. Payments. Payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205 (*Rules and Procedures for Efficient Federal-State Funds Transfers*) and Treasury Financial Management Manual, Volume 1, Part 4A-2000.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

3. PA Overpayments. FEMA will use a “single obligation” system to process payments through a subaccount for each subaward under PA and HMGP. When FEMA identifies an overpayment as a potential debt, the Territory will have 60 days to appeal that initial determination. Upon exhaustion of appeal rights, the Territory will have 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center (FFC) for collection. The Territory may resolve the amount owed by paying FEMA directly. It may also deposit the amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the Territory may request administrative offset of the amount owed against identifiable, allowable, allocable, and reasonable costs under the same subaward which have not yet been reimbursed by FEMA.
4. No Property Interest. The Territory and subrecipients have no property interest in the funds made available through the HHS/Smartlink account. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the Territory in HHS/Smartlink due to grant amendments, partial or full grant terminations, closeouts, or other reasons.

B. AVAILABILITY OF FUNDING. FEMA and the Territory agree to take measures to deliver assistance to individuals, households, governments and private nonprofits as expeditiously as possible, consistent with federal laws and regulations.

1. This Agreement does not comprise an award of any type of assistance authorized for the Declaration or as described in Part III, Types of Federal Assistance, above and this Agreement does not obligate any federal funding. Rather, FEMA will separately make such award decisions for the assistance authorized for the Declaration.
2. If FEMA decides to make an award of federal assistance, such assistance will be made available within the limits of funds available from Congressional appropriations for such purposes.
3. FEMA may, in its sole discretion, if necessary because of limited funds, give first priority to assistance for individuals and households, emergency work for protection of public health and safety, and administrative costs for managing the disaster programs. FEMA will provide other financial assistance when, and if, funds become available and will generally provide them in the order the claims are received.

V. REPORTING

A. FEDERAL FINANCIAL REPORTS.

1. Initial and Quarterly Financial Reports.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

- a. The Territory must submit complete and accurate Federal Financial Reports (Standard Form 425) to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date for each program. The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the Territory. Subsequent reporting requirements will not be waived. The Territory must submit quarterly financial status reports thereafter until closeout of the federal grant award for each program funded. Reports are due on January 30, April 30, July 30, and October 30.
 - b. The Territory must indicate in the remarks section on the quarterly financial report each time it has submitted a final expenditure report for a project or subaward as detailed in paragraph V.B below. The information must include the name of the subrecipient, the project number, and the date on which the Territory submitted the project closeout report. If it is the last project for a subrecipient, then the Territory must also note that the quarterly report reflects the last expenditures of that subrecipient.
2. Final Financial Report. The Territory must submit a complete and accurate final Federal Financial Report (SF 425), no later than 90 days after each program's federal grant award performance period expiration date.

B. FINAL EXPENDITURE REPORT FOR PROJECT COMPLETION

1. PA Large Project Final Expenditure Report
 - a. The Territory must submit a payment of claim to FEMA for each PA large project as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The Territory must submit the final payment of claim for a PA large project within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
2. PA Small Project Final Expenditure Report
 - a. The Territory must provide a small project certification for itself and each subrecipient as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The Territory must submit the certification within 180 days from the earlier of the date that the non-Federal entity completes its last small project or the latest project completion deadline of a small project.
3. PA Management Cost Project Final Expenditure Report

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

- a. The Territory must submit a payment of claim to FEMA for each subrecipient's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the subrecipient's last non-management cost PA project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a subrecipient's non-management cost PA project for the Declaration; or
 - iii. Two years from the date of the Declaration.
- b. The Territory must submit a payment of claim to FEMA for the Territory's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the last non-management cost PA project for the Declaration;
 - ii. 180 days after the latest project completion deadline of a non-management cost PA project for the Declaration;
 - iii. Two years from the date of the Declaration.

4. Governmental Subrecipients

- a. FEMA will confirm the reports described in paragraphs 1, 2, and 3 as the final expenditure report only if the Territory has submitted all outstanding information and certifications required by applicable regulations and FEMA policy and guidance and the report is complete and accurate.
- b. The confirmed, complete, and accurate project closeout report is the "final expenditure report for project completion as certified by the grantee" for the purposes of applying Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)).

C. PERFORMANCE REPORTS.

- 1. Initial and Quarterly Reports. The Territory must submit performance/progress reports in compliance with each program identified under this Agreement to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date. The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the grantee. Subsequent reporting requirements will not be waived. The Territory must submit quarterly performance/progress status reports thereafter until the grant performance period ends. Reports are due on January 30, April 30, July 30, and October 30.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

2. Report Content. The Territory must include in its quarterly performance/progress reports (OMB Form 1660-0017 PA for PA) a status of project/subaward completion, amount of expenditures, and amount of payment for advancement or reimbursement of costs for each project/subaward funded under each of the programs authorized under this Agreement. The Territory must submit project overruns requiring additional obligations to FEMA for review and approval prior to incurring costs.
3. Project Cost Overruns. The Territory must submit project cost overruns requiring additional obligations to FEMA for review and approval. Where review and approval is not sought before incurring the costs of an overrun, there is no assurance that FEMA will reimburse such costs.
4. Final Performance Report. The Territory must submit a final performance/progress report 90 days from each program's grant award performance period expiration date that addresses all approved activities and the performance goals outlined in the federal award.

D. ENFORCEMENT. FEMA may suspend drawdowns, provide other special conditions or take other authorized action pursuant to 2 CFR § 200.338 (*Remedies for Noncompliance*) if the Territory does not submit accurate and timely reports. This may include, among other things, the administrative closeout of a grant and/or any projects under a grant when the Territory is not responsive to reasonable efforts FEMA makes to collect required reports needed to complete closeout. Administrative closeout is a unilateral mechanism by FEMA to move forward with project or grant closeout using available grant information in lieu of final reports. This can require FEMA to make cash or cost adjustments and ineligible cost determinations, which may result in identifying a debt owed by FEMA.

E. RECORDS RETENTION.

1. Territory Requirement. The Territory must retain records for 3 years, except in certain rare circumstances described in 2 CFR § 200.333 (*Retention requirements for records*), from the date it submits the final Federal Financial Report (SF 425) to FEMA in compliance with 2 CFR § 200.333, notwithstanding the time period prescribed for subrecipients in subsection 2, Subrecipient Requirement, below. If FEMA administratively closes the grant where no final SF-425 was submitted, FEMA uses the date the grant was administratively closed as the start date for the 3-year record retention period. Subrecipient Requirement. The Territory must require subrecipients to retain project or subaward records for 3 years from the date that the Territory submits to FEMA the final expenditure report for a project or subaward as described above in Part V.B. If, however, there is any litigation, claim, negotiation, audit, request for information, or other action involving the project or subaward that starts before that date, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the 3-year period, whichever is later.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

VI. RECOVERY OF FUNDS

- A. **IN GENERAL.** FEMA may disallow costs and recover funds based on the results of audit or review during or after performance of the award to ensure compliance with the terms of the Agreement and award document. FEMA is required to recover funds when the Recipient or subrecipient has ineligible underruns (for example, actual costs for a PA large project are less than the amount FEMA awarded based on initial estimates); knowingly or negligently withholds or misrepresents material information; fails to complete work and comply with the terms of this Agreement or the approved award; expends federal funds in error; or incurs costs that are unreasonable or otherwise disallowed. If after exhaustion of appeal rights, FEMA determines a debt is owed, the Territory has 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center for collection. The Territory may do so by directly paying FEMA. The Territory may also deposit the amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the Territory may request to substitute unallowable costs for other costs that are allowable (e.g., necessary, allocable, and reasonable under the same award and have not yet been reimbursed by FEMA
- B. **DUPLICATION OF BENEFITS.**
1. **General.** The Territory must take all actions necessary and reasonable to ensure that all who receive federal assistance are aware of their responsibility to repay federal assistance that is duplicated by amounts available from insurance or any other source for the same purpose. FEMA may at any time pre-award or post-award adjust the level of funding provided to account for financial assistance provided from any other source for the same purpose as the federal assistance, or to account for benefits available for the same purpose from another source, irrespective of whether they are actually received.
 2. **Insurance.** Within his/her authorities, the Governor must ensure, through the territory agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster survivors and others who receive federal assistance. The Territory must also take all reasonable steps to ensure that disaster survivors are aware of procedures for filing insurance claims, and are informed of any territory procedures instituted for assisting insured disaster survivors.
- C. **COOPERATION.** The Territory agrees, on its behalf and on behalf of its political subdivisions and others that receive federal assistance, to cooperate with the Federal Government in seeking recovery of federal assistance against any party or parties whose intentional acts or omissions or whose negligence or other tortious conduct may have caused or contributed to the damage or hardship for which federal assistance was provided under this Agreement. If applicable, FEMA will treat recovered funds as duplicated

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

benefits available to the recipient/ subrecipient in accordance with Section 312 of the Stafford Act (42 U.S.C. § 5155).

- D. TERRITORY RESPONSIBILITIES.** The Territory is responsible for the recovery of federal assistance expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
1. The Territory must adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF 425.
 2. The Territory must designate on its PA quarterly progress reports the applicants/ subrecipients from which they have not processed recoveries but from which recoveries are due FEMA.
 3. The Territory is responsible for notifying FEMA of any potential debt as a result of federal funds expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
 4. The Territory must report all cases of suspected fraud to the DHS Office of Inspector General. The Territory must cooperate with any investigation conducted by the DHS Office of Inspector General.
 5. The Territory must cooperate with FEMA regarding any and all lawsuits that may result from the Territory or FEMA's attempt to recover funds or disallow costs.
- E. STATUTE OF LIMITATIONS.**
1. General. The 3-year statute of limitations limiting FEMA's ability to recover funds paid as provided for in Section 705(a) of the Stafford Act (42 U.S.C. § 5205(a)) begins with the Territory's submission of the "final expenditure report" described in paragraphs V.B 1, 2, and 3.
 2. Initiation of an Administrative Action to Recover Payment. The initiation of an administrative action to recovery payments includes FEMA's written notice to the Territory or subrecipient of a questioned or disallowed cost or improper payment (including a request for information concerning such cost or payment) and written notice to the Territory or subrecipient of a FEMA or 3rd party review or audit.
- F. REFUNDS, REBATES AND CREDITS.** The Territory must transfer to FEMA the appropriate share, based on the federal support percentage, of any refund, rebate, credit or other amounts arising from the performance of this agreement. The Territory must take necessary action to promptly collect all monies due or which may become due and if applicable, to cooperate with the Federal Government in any claim or suit in connection with amounts due.

VII. CONSTRUCTION REQUIREMENTS

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

Prior to the start of any construction activity, the Territory will ensure that all applicable federal, territory, and local permits and approvals are obtained and all permit conditions are addressed including FEMA and recipient/subrecipient compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other applicable environmental laws and executive orders. All construction should be in accordance with approved permits, projects plans and specifications, applicable building codes and program guidance.

VIII. PERFORMANCE PERIODS

- A. **PROGRAM/GRANT AWARD.** The Territory will complete all grant award activities, including all projects and/or activities approved under each federal grant award, within the time period prescribed in FEMA regulations, program guidance and the award documents.
- B. **EXTENSIONS.** The Territory will include with any written request for an extension information and documentation to support the amendment and a schedule for completion. FEMA may approve subsequent work, monetary increase amendments, or activity time extension amendments only if the Territory submits all financial and performance reports to the appropriate Regional Office. FEMA will only approve extensions to the federal grant award period of performance or project completion timelines (if applicable) that comply with program regulatory timeframes. FEMA will not approve extensions for delays caused by lack of non-federal share funding.

IX. REMEDIES FOR NONCOMPLIANCE

FEMA may take action as it determines appropriate under the circumstances including but not limited to withholding of payments, disallowance of costs, suspension or termination of the award if the Territory or sub-recipient fails to comply with applicable Federal statutes, regulations or the terms of this Agreement pursuant to 2 CFR § 200.338 (Remedies for Noncompliance).

X. ATTACHMENTS, PROGRAMMATIC ADDENDUMS AND AMENDMENTS

- A. **ATTACHMENTS.** Attached and also made part of this Agreement are the following Attachments which contain the terms and conditions applicable to all assistance provided under this Agreement:

Attachment 1: List of Territory Certification Officers

Attachment 2: Certification Regarding Lobbying

Attachment 3: List of Designated Programs and Areas

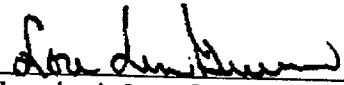
- B. **AMENDMENTS.** This Agreement may be amended at any time by written approval of both parties. Executed amendments will be numbered and appended to this agreement in the order that they are executed. Electronic copies of executed amendments will be transmitted to the FEMA Declarations Unit.

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

XII. SIGNATURES AND EFFECTIVE DATE

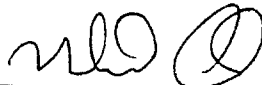
- A. **COUNTERPART SIGNATURES.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a .pdf format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or .pdf signature page were an original thereof.
- B. **EFFECTIVE DATE.** This FEMA-Territory Agreement becomes effective on the date of signature by the last Party.

Agreed:



Lourdes A. Leon Guerrero
Governor
Territory of Guam
3/20/2020

Date



Robert J. Fenton
Regional Administrator
FEMA Region IX
3/23/20

Date

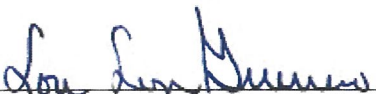
**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

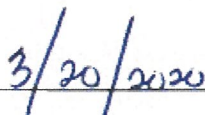
**ATTACHMENT 1
LIST OF TERRITORY CERTIFICATION OFFICERS**

1. The Governor hereby certifies that Anthony M. Babauta is the Governor's Authorized Representative (GAR) empowered to execute on behalf of the Territory all necessary documents for federal assistance, including approval of subawards and certification of claims for Public Assistance. P. Tim Aguon is the Alternate Governor's Authorized Representative and is similarly empowered.
2. The Governor hereby certifies that Charles V. Esteves and Leo Rustum J. Espia are the Territory Coordinating Officer (TCO) and Alternate TCO, respectively, who will act in cooperation with the Federal Coordinating Officer under this Declaration.
3. The Governor hereby certifies that Marie T. Quenga and Kenny R. Artero are the representatives of the Territory authorized to receive donations or loans of surplus property on behalf of the Territory and to execute certification, agreements, and other necessary documents with regard thereto.
4. The Governor hereby certifies that Ciriaco S. Sanchez and Marie T. Quenga are the Territory officials authorized to execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in full compliance with FEMA nondiscrimination regulations (44 CFR Part 7, *Nondiscrimination in Federally-Assisted Programs* and 44 CFR § 206.11, *Nondiscrimination in disaster assistance*).
5. The Governor hereby certifies that Claudia S. Acfalle, Marie T. Quenga, and Ciriaco S. Sanchez are the Territory officials who will execute compliance reports, carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Restrictions on approval authority of the above named officials: None.

Agreed:


Lourdes A. Leon Guerrero
Governor


Date

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

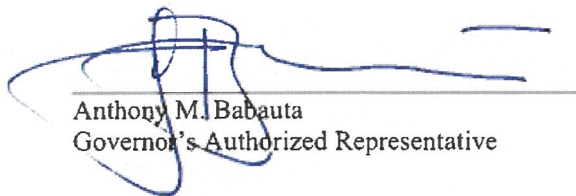
**ATTACHMENT 2
CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 CFR Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification must be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Anthony M. Babauta
Governor's Authorized Representative

3/20/2020

Date

**FEMA-TERRITORY AGREEMENT
FEMA-3466-EM-GU**

**ATTACHMENT 3
LIST OF DESIGNATED AREAS AND PROGRAMS**

Eligible applicants in the Territory of Guam are eligible to apply for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.



FEMA-TERRITORY AGREEMENT FEMA-4495-DR-GU

I. PURPOSE AND BACKGROUND

The President declared on March 27, 2020, that a major disaster exists in the Territory of Guam. This declaration was based on COVID-19 (incident) beginning on January 20, 2020, and continuing (incident period). This is the FEMA-Territory Agreement (Agreement) for this major disaster, designated FEMA-4495-DR (Declaration), under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. §§ 5121-5207) (Stafford Act), in accordance with 44 C.F.R. § 206.44. This Agreement between the Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS) and the Territory of Guam (Territory or Recipient) governs all federal assistance that FEMA provides the Territory for this Declaration.

II. GENERAL PROVISIONS

- A. GRANT AWARD PACKAGE.** Any federal grant (which includes a cooperative agreement for purposes of this Agreement) award package issued under this Agreement will consist of the Declaration, this Agreement, and the *Application(s) for Federal Assistance* (Standard Form (SF) 424), including *Assurances – Non-Construction Programs* (SF-424B) and *Assurances – Construction Programs* (SF 424D), when applicable, submitted by the Territory for each grant provided under the Declaration and this Agreement.
- B. FEMA RESPONSIBILITIES.** FEMA may provide federal assistance to the Territory or residents of the Territory, if applicable, in the form of federal grant assistance, payments to individuals, and/or direct federal services to support the activities and programs authorized under the Stafford Act and the Declaration in accordance with this Agreement.
- C. TERRITORY RESPONSIBILITIES**
1. The Territory agrees to comply with the federal grant award terms and conditions set forth in the Declaration, this Agreement, individual projects, records of environmental consideration, Territory Mitigation Plan (if applicable) and the Territory Administrative Plans in place for each grant award.
 2. The Territory agrees to lead, manage, and drive the overall recovery process and coordinate recovery activities and technical support by setting

FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU

appropriate territory policies. The Territory will coordinate with local, tribal and Federal governments and agencies, private businesses, and nonprofit organizations to lead and coordinate territory recovery planning and assistance to impacted communities.

3. The Territory agrees to be the “Recipient” for all federal financial assistance provided under the Stafford Act and this Agreement, with the exception of financial assistance for Temporary Housing and financial assistance for Housing Repair and Replacement under the Individuals and Household Program (IHP) that is always administered by FEMA or for Direct Temporary Housing, Permanent Housing, and/or Other Needs Assistance (ONA) under the IHP when administered by FEMA rather than by the Territory (*i.e.*, the “FEMA option”), if applicable.
 - a. Recipient has the same meaning as “Grantee” as used in governing statutes, regulations, and FEMA guidance.
 - b. A recipient is also a “non-Federal entity” for grants administration purposes.
4. The Territory will serve as the “pass-through entity” with respect to the Territory’s role in providing subawards and administering grant assistance provided to subrecipients. As the pass-through entity, the Territory agrees to comply with and will require all subrecipients to comply with the requirements of all applicable laws and regulations, including the Stafford Act, Title 44 of the Code of Federal Regulations (C.F.R.) (*Emergency Management and Assistance*), 2 C.F.R. Part 3002 (implementing 2 C.F.R. Part 200 (*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*)), and applicable FEMA policies and guidance.
 - a. The term “subrecipient” has the same meaning as “subgrantee” as used in governing statutes, regulations, and FEMA guidance.
 - b. A subrecipient is also a “non-Federal entity” for grants administration purposes.
 - c. A subrecipient may also serve as a pass-through entity under certain circumstances in the Hazard Mitigation Grant Program (HMGP)
5. The Territory is required to maintain a FEMA-approved Territory Mitigation Plan (TMP) in accordance with 44 C.F.R. Part 201 (*Mitigation Planning*) as a condition of receiving non-emergency Stafford Act assistance.
 - a. The Territory must update its TMP every five years.

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- b. The Territory must have a FEMA-approved mitigation plan to receive the following assistance:
 - i. Public Assistance (PA) – Permanent Work Categories C-G
 - ii. HMGP
 - c. FEMA will not obligate funds for PA Permanent Work or HMGP projects unless that Territory has a FEMA-approved TMP.
 - d. If the Territory does not have a FEMA-approved TMP as of the date of the Declaration, the Territory must submit its approvable TMP within 30 days of the date of the Declaration for FEMA review and approval. If the Territory fails to do so, FEMA will deny the Territory’s application for PA Permanent Work and HMGP assistance under the Declaration.
 - e. If the Territory’s FEMA-approved SMP lapses after the Declaration, the Territory must submit its approvable TMP within 30 days of the lapse for FEMA review and approval. FEMA will cease obligating funds for PA Permanent Work or HMGP projects during any lapse period between expiration of the current TMP and approval of an updated TMP.
- 6. The Territory agrees that any supplies, materials, equipment, goods, or property introduced into the Territory by the Government of the United States, or its contractors, as part of, or in conjunction with, the assistance provided in this Agreement are exempt from any tariffs, customs duties, or import and export taxes in the Territory. The Territory will issue expeditiously any import licenses required for supplies, materials, equipment, goods or property imported under this Agreement and will assist, where appropriate, in expediting their movement through port and transportation facilities and their clearance through customs.

D. CERTIFICATION AND WAIVERS

- 1. **Attachment 1** to this Agreement lists the Territory officials named by the Governor as authorized to execute certifications and otherwise to act on behalf of and to legally bind the Territory.
- 2. **Attachment 2** to this Agreement is the Territory’s Certification Regarding Lobbying. This certification complies with the lobbying prohibitions in the DHS Standard Terms and Conditions and with the FEMA regulations at 44 C.F.R. Part 18 (*New Restrictions on Lobbying*).
- 3. The Territory waives any consultation process under Executive Order 12372 (*Intergovernmental review of Federal programs*) and 44 C.F.R. Part 4 (*Intergovernmental Review of Federal Emergency Management Agency*

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

(FEMA) Programs and Activities) for grants, cooperative agreements, loans, or other financial assistance under the Stafford Act for the Declaration.

E. FEDERAL ASSISTANCE

1. The Territory has requested federal assistance and submitted a FEMA Form 010-0-13 (*Request for Presidential Disaster Declaration – Major Disaster or Emergency*), the terms, representations, and assurances of which are incorporated by reference into this Agreement.
2. Federal assistance, except for assistance under the HMGP, is limited to activities necessary to alleviate damage, loss, hardship, or suffering resulting from the incident that took place during the incident period, except that reasonable expenses that were incurred in anticipation of and immediately preceding the incident may be eligible.
3. Federal assistance under the Stafford Act and this Agreement is limited to those areas and programs designated by the President or FEMA in the Federal Register Notices for this Declaration, which are listed in **Attachment 3** to this Agreement and are incorporated by reference into this Agreement.
4. All scopes of work and costs approved as a result of this Agreement, whether as estimates or final costs approved through subawards, project worksheets, or otherwise, will incorporate by reference the terms of this Agreement and must comply with applicable laws, regulations, policy, and guidance in accordance with this Agreement.
5. Pursuant to Executive Order 13858 “Strengthening Buy-American Preferences for Infrastructure Projects,” FEMA encourages recipients to use, to the greatest extent practicable and consistent with the law, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States, in Public Assistance and Hazard Mitigation Grant Program eligible public infrastructure repair and construction projects affecting surface transportation, ports, water resources including sewer and drinking water, and power. Such preference must be consistent with the law, including cost and contracting requirements at 2 CFR Part 200.

F. CONTROLLING AUTHORITIES. This Agreement is subject to the following governing authorities:

1. The Stafford Act, its implementing regulations contained in Title 44 of the C.F.R., and FEMA policy and guidance.
2. The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards set forth at 2 C.F.R. Parts 200 and 3002.

FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU

3. The DHS Standard Terms and Conditions in effect on the date of the Declaration, available at https://www.dhs.gov/sites/default/files/publications/fy_19_dhs_standard_terms_and_conditions_version_9.2_dated_04-17-2019_0.pdf which are incorporated by reference into this Agreement.

III. TYPES OF FEDERAL ASSISTANCE

The President may authorize any of the following federal assistance programs and **Attachment 3** to this Agreement sets forth the specific federal assistance programs authorized for this Declaration.

- A. **PUBLIC ASSISTANCE (PA)**. The following terms apply when the PA Program is authorized and FEMA makes a PA grant award to the Territory:

1. **Cost Share**. FEMA funding for PA project costs (which do not include management costs) will be limited to 75 percent of total eligible costs after appropriate reductions (such as for insurance), except as may be provided for in **any subsequent** cost share amendments to the Declaration, which will be incorporated into this agreement by amendment. The Territory agrees to make available the non-federal share of PA project costs.
2. **Management Costs**. FEMA funding for PA management costs will be 100 percent of the total eligible management costs, which will be limited to not more than 12 percent of the total award amount. Of this amount, the Territory may use up to 7 percent and a subrecipient may use up to 5 percent of the subrecipient's total award amount. The "total award amount" means the actual eligible PA project costs, including both the federal and non-federal share, and after appropriate reductions (such as for insurance) and excluding management costs. There is no non-federal share of PA management costs.
3. **Direct Federal Assistance**. When Direct Federal Assistance is requested and the assistance is provided:
 - a. The Territory will:
 - i. Provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work;
 - ii. Hold and save the United States free from damages due to the requested work, and will indemnify the Federal Government against any claims arising from such work;
 - iii. Provide reimbursement to FEMA for the non-federal share of the cost of such work; and

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- iv. Assist the performing federal agency in all support and local jurisdictional matters.
 - b. FEMA will bill the Territory for the non-federal share of Direct Federal Assistance provided and the Territory agrees to pay the non-federal share pursuant to the timeframes set forth in the letter or other correspondence transmitting the bill.
 - 4. Debris Removal. When debris removal is authorized, the Territory agrees to indemnify and hold harmless the United States for any claims arising from the removal of debris or wreckage for the Declaration. The Territory agrees that debris removal from public and private property will not occur until an unconditional authorization for the removal of debris is provided.
 - 5. Additional Terms and Conditions. The attached **Public Assistance Programmatic Addendum** includes additional terms and conditions for the implementation of the PA Program as applicable and PA grant performance goals.
- B. **INDIVIDUAL ASSISTANCE (IA)**. When the Declaration authorizes IA overall or specific IA programs and FEMA makes an IA grant award to the Territory, the following terms apply:
 - 1. General. FEMA may award grant funds to the Territory for the IA programs authorized under the Declaration and requested by the Territory and, for Direct Temporary Housing and Permanent Housing Construction, may provide direct assistance.
 - 2. Other Needs Assistance. When the Declaration authorizes the IHP and FEMA provides ONA to individuals and households, the Territory agrees to make available its 25 percent share of any ONA that is provided under Section 408(e) of the Stafford Act (codified as amended at 42 U.S.C. § 5174(e)).
 - a. FEMA Option. When FEMA administers ONA under the FEMA Option, FEMA will bill the Territory monthly for the cost share. The Territory agrees to pay the amount billed within 30 days of receipt.
 - b. Joint Option. If the Territory administers ONA under the Joint Option, a cooperative agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individuals and households and actual administrative costs in accordance with Section 408 of the Stafford Act (codified as amended at 42 U.S.C. § 5174) and 44 C.F.R. § 206.120. Administrative costs will equal up to 5 percent of the ONA grant.

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- c. Territory Option. If the Territory administers ONA under the Territory Option, a grant agreement will be executed as an IA Program Addendum to this Agreement and FEMA will pay to the Territory 75 percent of the total ONA payments to individuals and households and administrative costs allowed under Section 408 of the Stafford Act (codified as amended at 42 U.S.C. § 5174) and 44 C.F.R. § 206.120. Administrative costs will equal up to 5 percent of the actual eligible ONA payments made to individual and households, including both the federal and non-federal share.

3. Additional Terms and Conditions. Additional terms and conditions regarding implementation of the IHP and other applicable IA Programs including IA grant performance goals and administrative plans may be included in an attached **IA Programmatic Addendum**.

C. **HAZARD MITIGATION GRANT PROGRAM (HMGP).** When the Declaration authorizes the HMGP and FEMA makes a HMGP award to the Territory, the following provisions apply:

- 1. Total Funding. Total federal contributions are based on the estimated aggregate amount of grants to be made under the Stafford Act for this major disaster (less any associated administrative costs), and will be 15 percent for the first \$2,000,000,000 or less of such amounts; 10 percent of the portion of such amounts over \$2,000,000,000 and not more than \$10,000,000,000; and 7.5 percent of the portion of such amounts over \$10,000,000,000 and not more than \$35,333,000,000.
- 2. Cost Share. FEMA funding for total HMGP costs, excluding management costs, will be limited to no more than 75 percent of total eligible costs after appropriate deductions. The Territory agrees to make available the 25 percent non-federal share of HMGP and, at its request, may provide a greater non-federal share of an activity cost.
- 3. Management Costs
 - a. FEMA funding for HMGP management costs will be 100 percent of the total eligible management costs, which will be limited to 15 percent of the total award amount. The Territory may use up to 10 percent of the total award amount and subrecipients may use up to 5 percent of the subrecipient's total award amount. There is no non-federal share of HMGP management costs
 - b. The "total award amount" means the actual eligible HMGP activity costs, including both the federal and the non-federal share, and after appropriate reductions (such as for insurance) and excluding management costs. For the Territory, this is the total of the federal contribution and the required nonfederal contribution under the HMGP

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

grant award. For a subrecipient, this is the federal contribution and nonfederal contribution that the Territory has identified as contributing to meet the nonfederal share of the HMGP grant award. In the case where the non-federal share for the entire HMGP grant award exceeds the required 25 percent, those excess non-federal contributions are not included in the total award amount and are not included in the calculation of management costs.

4. Program Administration by Territories. If the Territory requests and FEMA approves the Territory's request for inclusion in the Program Administration by States (PAS) Pilot Program, FEMA and the Territory will execute an Operating Agreement that will be included in the attached **HMGP Programmatic Addendum**.
5. Additional Terms and Conditions. Additional terms and conditions regarding implementation of HMGP, including performance goals, may be included in the attached **HMGP Programmatic Addendum**.

IV. FUNDING

A. PAYMENT PROCESS

1. Payment System. FEMA will pay the Territory using the U.S. Department of Health and Human Services Payment Management System (HHS/Smartlink).
2. Payments. Payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (*Rules and Procedures for Efficient Federal-State Funds Transfers*) and Treasury Financial Management Manual, Volume 1, Part 4A-2000.
3. IA Overpayments. When FEMA identifies an overpayment under an IA grant award, subject to the exhaustion of appeals, FEMA will deobligate the funds from the Territory's HHS/Smartlink account. If there are insufficient funds in the account, the Territory will have 30 days to reimburse the HHS/Smartlink account. At that time, if there are still insufficient funds in the subaccount, FEMA will refer the amount to the FEMA Finance Center (FFC) for collection.
4. PA and HMGP Overpayments. FEMA will use a "single obligation" system to process payments through a subaccount for each subaward under PA and HMGP. When FEMA identifies an overpayment as a potential debt, the Territory will have 60 days to appeal that initial determination. Upon exhaustion of appeal rights, the Territory will have 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center (FFC) for collection. The Territory may resolve the amount owed by paying FEMA directly. It may also deposit the

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the Territory may request administrative offset of the amount owed against identifiable, allowable, allocable, and reasonable costs under the same subaward which have not yet been reimbursed by FEMA.

5. No Property Interest. The Territory and subrecipients have no property interest in the funds made available through the HHS/Smartlink account. At any time during the lifecycle of the grant, FEMA may adjust the amounts available to the Territory in HHS/Smartlink due to grant amendments, partial or full grant terminations, closeouts, or other reasons.

B. AVAILABILITY OF FUNDING. FEMA and the Territory agree to take measures to deliver assistance to individuals, households, governments, and private nonprofits as expeditiously as possible consistent with federal laws and regulations.

1. This Agreement does not comprise an award of any type of assistance authorized for the Declaration or as described in Part III, Types of Federal Assistance, above and this Agreement does not obligate any federal funding. Rather, FEMA will separately make such award decisions for the assistance authorized for the Declaration.
2. If FEMA decides to make an award of federal assistance, such assistance will be made available within the limits of funds available from Congressional appropriations for such purposes.
3. FEMA may, in its sole discretion, if necessary because of limited funds, give first priority to assistance for individuals and households, emergency work for protection of public health and safety, and administrative costs for managing the disaster programs. FEMA will provide other financial assistance when, and if, funds become available and will generally provide them in the order the claims are received.

V. REPORTING

A. FEDERAL FINANCIAL REPORTS

1. Initial and Quarterly Financial Reports
 - a. The Territory must submit complete and accurate Federal Financial Reports (Standard Form 425) to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date for each program (PA, HMGP, and the various IA programs). The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the Territory. Subsequent reporting requirements will not be waived. The Territory must submit quarterly

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

financial status reports thereafter until closeout of the federal grant award for each program funded. Reports are due on January 30, April 30, July 30, and October 30.

- b. The Territory must indicate in the remarks section on the quarterly financial report each time it has submitted a final expenditure report for a project or subaward as detailed in paragraph V.B below. The information must include the name of the subrecipient, the project number, and the date on which the Territory submitted the project closeout report. If it is the last project for a subrecipient, then the Territory must also note that the quarterly report reflects the last expenditures of that subrecipient.
- 2. Final Federal Financial Report. The Territory must submit a complete and accurate final Federal Financial Report (SF 425), no later than 90 days after each program's federal grant award performance period expiration date.

B. FINAL EXPENDITURE REPORT FOR PROJECT COMPLETION

- 1. PA Large Project Final Expenditure Report
 - a. The Territory must submit a payment of claim to FEMA for each PA large project as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The Territory must submit the final payment of claim for a PA large project within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
- 2. PA Small Project Final Expenditure Report
 - a. The Territory must provide a small project certification for itself and each subrecipient as required by FEMA regulations and guidance, including 44 C.F.R. § 206.205.
 - b. The Territory must submit the certification within 180 days from the earlier of the date that the non-Federal entity completes its last small project or the latest project completion deadline of a small project.
- 3. PA Management Cost Project Final Expenditure Report
 - a. The Territory must submit a payment of claim to FEMA for each subrecipient's PA management cost project within 180 days after the earlier to occur of the following:
 - i. 180 days after work is completed on the subrecipient's last non-management cost PA project for the Declaration;

FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU

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**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- i. 180 days after work is completed on the last non-management cost HMGP project for the Declaration;
 - ii. 180 days after the latest performance period of a non-management cost HMGP project for the Declaration; or
 - iii. Eight years from the date of the Declaration
- 6. IA Final Expenditure Report. If the Territory issues a subaward under the Disaster Case Management Program, Crisis Counseling Program, ONA, Direct Temporary Housing, or Permanent Housing Construction grant award, then it must submit a payment of claim to FEMA for that subaward within 180 days from the earlier of the date the non-Federal entity completes the project or the project completion deadline.
- 7. Governmental Subrecipients
 - a. FEMA will confirm the reports described in paragraphs 1, 2, 3, 4, 5, 6 as the final expenditure report only if the Territory has submitted all outstanding information and certifications required by applicable regulations and FEMA policy and guidance and the report is complete and accurate.
 - b. The confirmed, complete, and accurate project closeout report is the “final expenditure report for project completion as certified by the grantee” for the purposes of applying Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)).

C. PERFORMANCE REPORTS

- 1. Initial and Quarterly Reports. The Territory must submit performance/progress reports in compliance with each program identified under this Agreement to the FEMA Regional Office 30 days after the end of the first federal quarter following the federal award date. The Regional Administrator or designee may waive the initial report if the incident is of such magnitude and complexity that it would place an undue administrative burden on the grantee. Subsequent reporting requirements will not be waived. The Territory must submit quarterly performance/progress status reports thereafter until the grant performance period ends. Reports are due on January 30, April 30, July 30, and October 30.
- 2. Report Content. The Territory must include in its quarterly performance/progress reports (OMB Form 1660-0017 PA and OMB Form 1660-0076 HMGP for PA and HMGP, respectively) a status of project/subaward completion, amount of expenditures, and amount of payment for advancement or reimbursement of costs for each project/subaward funded under each of the programs authorized under this Agreement, including for properties purchased for open space under the HMGP.

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

3. Project Cost Overruns. The Territory must submit project cost overruns requiring additional obligations to FEMA for review and approval. Where review and approval is not sought before incurring the costs of an overrun, there is no assurance that FEMA will reimburse such costs. In compliance with 44 C.F.R. § 206.438, the Territory must submit project cost overruns requiring additional HMGP obligations to FEMA for review and approval before incurring costs.
4. Final Performance Report. The Territory must submit a final performance/progress report 90 days from each program's grant award performance period expiration date that addresses all approved activities and the performance goals outlined in the federal award.

D. ENFORCEMENT. FEMA may suspend drawdowns, impose other special conditions, or take other authorized action pursuant to 2 C.F.R. § 200.338 (*Remedies for Noncompliance*) if the Territory does not submit accurate and timely reports. This may include, among things, the administrative closeout of a grant and/or any projects under a grant when the Territory is not responsive to reasonable efforts FEMA makes to collect required reports needed to complete closeout. Administrative closeout is a unilateral mechanism by FEMA to move forward with project or grant closeout using available grant information in lieu of final reports. This can require FEMA to make cash or cost adjustments and ineligible cost determinations, which may result in identifying a debt owed to FEMA.

E. RECORDS RETENTION

1. Territory Requirement. The Territory must retain records for 3 years, except in certain rare circumstances described in 2 C.F.R. § 200.333 (*Retention requirements for records*), from the date it submits the final Federal Financial Report (SF 425) to FEMA in compliance with 2 C.F.R. § 200.333, notwithstanding the time period prescribed for subrecipients in subsection 2, Subrecipient Requirement, below. If FEMA administratively closes the grant where no final SF-425 was submitted, FEMA uses the date the grant was administratively closed as the start date for the 3-year record retention period.
2. Subrecipient Requirement. The Territory must require subrecipients to retain project or subaward records for at least 3 years from the date that the Territory submits to FEMA the final expenditure report for a project or subaward as described above in paragraph V.B. If, however, there is any litigation, claim, negotiation, audit, request for information, or other action involving the project or subaward that starts before that date, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the 3-year period, whichever is later.

VI. RECOVERY OF FUNDS

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

- A. **GENERAL.** FEMA may disallow costs and recover funds based on the results of audit or review during or after performance of the award to ensure compliance with the terms of the Agreement and award document. FEMA is required to recover funds when the Recipient or subrecipient has ineligible underruns (for example, actual costs for a PA large project are less than the amount FEMA awarded based on initial estimates); knowingly or negligently withholds or misrepresents material information; fails to complete work and comply with the terms of this Agreement or the approved award; expends federal funds in error; or incurs costs that are unreasonable or otherwise disallowed. If after exhaustion of appeal rights, FEMA determines a debt is owed, the Territory has 30 days to resolve the amount owed before the debt is referred to the FEMA Finance Center for collection. The Territory may do so by directly paying FEMA. The Territory may also deposit the amount owed directly into the applicable subaccount in HHS/Smartlink and notify FEMA when it has reimbursed that subaccount, after which FEMA will deobligate that amount in the subaccount. Alternatively, the Territory may request to substitute unallowable costs for other costs that are allowable (e.g., necessary, allocable, and reasonable under the same award and have not yet been reimbursed by FEMA).
- B. **DUPLICATION OF BENEFITS**
1. **General.** The Territory must take all actions necessary and reasonable to ensure that all who receive federal assistance are aware of their responsibility to repay federal assistance that is duplicated by amounts available from insurance or any other source for the same purpose. FEMA may at any time pre-award or post-award adjust the level of funding provided to account for financial assistance provided from any other source for the same purpose as the federal assistance or to account for benefits available for the same purpose from another source, irrespective of whether they are actually received.
 2. **Insurance.** Within his/her authorities, the Governor must ensure, through the Territory agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster survivors and others who receive federal assistance. The Territory must also take all reasonable steps to ensure that disaster survivors are aware of procedures for filing insurance claims, and are informed of any territory procedures instituted for assisting insured disaster survivors.
- C. **COOPERATION.** The Territory agrees, on its behalf and on behalf of its political subdivisions and others that receive federal assistance, to cooperate with the Federal Government in seeking recovery of federal assistance against any party or parties whose intentional acts or omissions or whose negligence or other tortious conduct may have caused or contributed to the damage or hardship for which federal assistance was provided under this Agreement. If applicable, FEMA will treat recovered funds as duplicated benefits available to the Recipient/subrecipient in

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

accordance with Section 312 of the Stafford Act (codified as amended at 42 U.S.C. § 5155).

- D. TERRITORY RESPONSIBILITIES.** The Territory is responsible for recovering federal assistance expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
1. The Territory must adjust its expenditures as it recovers funding and will report these adjustments quarterly on the Federal Financial Report, SF 425.
 2. The Territory must designate on its quarterly progress reports the applicants/subrecipients from which they have not processed recoveries but from which recoveries are due FEMA.
 3. The Territory must notify FEMA of any potential debt as a result of federal funds expended in error, misrepresentation, fraud, or for costs otherwise disallowed or unused.
 4. The Territory must report all cases of suspected fraud to the DHS Office of Inspector General. The Territory must cooperate with any investigation conducted by the DHS Office of Inspector General.
 5. The Territory must cooperate with FEMA regarding any and all lawsuits that may result from the Territory or FEMA's attempt to recover funds or disallow costs.

E. STATUTE OF LIMITATIONS

1. General. The 3-year statute of limitations limiting FEMA's ability to initiate an administrative action to recover funds paid as provided for in Section 705(a) of the Stafford Act (codified as amended at 42 U.S.C. § 5205(a)) begins with:
 - a. PA and HMGP. The Territory's submission of final expenditure report described in paragraph V.B.1, 2, 3, 4, and 5.
 - b. IA Subawards. The Territory's submission of the final expenditure report described in paragraph V.B.6.
 - c. IA Grant Awards. The Territory's submission of the Final Federal Financial Report described in paragraph V.A for any portion of work under an IA grant completed by the Territory directly and not through a subaward.
2. Initiation of an Administrative Action to Recover Payment. The initiation of an administrative action to recover payment includes FEMA's written notice to the Territory or a subrecipient of a questioned or disallowed cost or improper payment (including a request for information concerning such

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

cost or payment) and written notice to the Territory or a subrecipient of a FEMA or 3rd party review or audit.

- F. **REFUNDS, REBATES AND CREDITS.** The Territory must transfer to FEMA the appropriate share, based on the federal support percentage, of any refund, rebate, credit or other amounts arising from the performance of this agreement. The Territory must take necessary action to promptly collect all monies due or which may become due and if applicable, to cooperate with the Federal Government in any claim or suit in connection with amounts due.

VII. CONSTRUCTION REQUIREMENTS

The Territory must ensure that all applicable federal, territory, and local permits and approvals are obtained and all permit conditions are addressed before the start of any construction activity, including FEMA and Recipient/subrecipient compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other applicable environmental laws and executive orders. All construction should be in accordance with approved permits, projects plans and specifications, applicable building codes, and program guidance.

VIII. PERFORMANCE PERIODS

- A. **PROGRAM/GRANT AWARD.** The Territory will complete all grant award activities, including all projects and/or activities approved under each grant award, within the time period prescribed in FEMA regulations, program guidance, and the award documents.
- B. **EXTENSIONS.** The Territory will include with any written request for an extension information and documentation to support the amendment and a schedule for completion as detailed in federal regulations and FEMA guidance and policies. FEMA may approve subsequent work, monetary increase amendments, or activity time extension amendments only if the Territory submits all financial and performance reports to the Regional Office. FEMA will only approve extensions to the federal grant award period of performance or project completion timelines (if applicable) that comply with program regulatory timeframes. FEMA will not approve extensions for delays caused by lack of non-federal share funding.

IX. REMEDIES FOR NONCOMPLIANCE

FEMA may take action as it determines appropriate under the circumstances including but not limited to withholding of payments, disallowance of costs, suspension or termination of the award if the Territory or subrecipient fails to comply with applicable Federal statutes, regulations, or the terms of this Agreement pursuant to 2 C.F.R. § 200.338 (Remedies for Noncompliance).

X. ATTACHMENTS, PROGRAMMATIC ADDENDUMS AND AMENDMENTS

- A. **ATTACHMENTS.** Attached and made part of this Agreement are the following Attachments which contain terms and conditions applicable to all assistance provided under this Agreement:

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

Attachment 1: List of Territory Certification Officers

Attachment 2: Certification Regarding Lobbying

Attachment 3: List of Designated Programs and Areas

- B. PROGRAMMATIC ADDENDUMS.** Attached and also made part of this Agreement are the following Programmatic Addendums, which unless indicated otherwise in **Attachment 1** may be signed or agreed to on behalf of the Territory by the Governor's Authorized Representative (GAR) listed in **Attachment 1**, and are included on a case by case basis depending on the assistance designated and whether additional terms and conditions for implementation of specific assistance programs are needed.

XI. AMENDMENTS. This Agreement may be amended at any time by written approval of both parties. Executed amendments will be numbered and appended to this agreement in the order that they are executed. Electronic copies of executed amendments will be transmitted to the FEMA Declarations Unit.

XII. SIGNATURES AND EFFECTIVE DATE

- A. COUNTERPART SIGNATURES.** This Agreement may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a .pdf format data file, such signature will create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or .pdf signature page were an original thereof.
- B. EFFECTIVE DATE.** This FEMA-Territory Agreement becomes effective on the date of signature by the last party.

AGREED:

Lourdes A. Leon Guerrero
Governor
Territory of Guam

Robert J. Fenton
Regional Administrator
FEMA Region IX

Date

Date

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

**ATTACHMENT 1
LIST OF TERRITORY CERTIFICATION OFFICERS**

1. The Governor hereby certifies that Anthony M. Babauta is the Governor's Authorized Representative (GAR) empowered to execute on behalf of the Territory all necessary documents for federal assistance, including approval of subawards and certification of claims for Public Assistance. Tim P. Aguon is the Alternate GAR and is similarly empowered.
2. The Governor hereby certifies that Charles V. Esteves and Leo Rustum J. Espia are the Territorial Coordination Officer (TCO) and Alternate TCO, respectively, who will act in cooperation with the Federal Coordinating Officer under this Declaration.
3. The GAR, named above, is responsible for Territory performance of hazard mitigation activities under this Agreement and, further, Leo Rustum J. Espia is designated the Territory Hazard Mitigation Officer for the purposes of such hazard mitigation activities.
4. The Governor hereby certifies that Marie T. Quenga and Kenny R. Artero are the representatives of the Territory authorized to receive donations or loans of surplus property on behalf of the Territory and to execute certification, agreements, and other necessary documents with regard thereto.
5. The Governor hereby certifies that Ciriaco S. Sanchez and Marie T. Quenga are the Territory officials authorized to execute compliance reports, carry out compliance reviews, and distribute informational materials as required by FEMA to ensure that all recipients of federal assistance are in full compliance with FEMA nondiscrimination regulations (44 C.F.R. § 206.11, *Nondiscrimination in disaster assistance*).
6. The Governor hereby certifies that Claudia S. Acfalle, Marie T. Quenga, and Ciriaco S. Sanchez are the Territory officials who will execute compliance reports, carry out carry out compliance reviews, and distribute informational material as required by FEMA to ensure that all recipients of federal assistance are in compliance with the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
7. The GAR or Alternate GAR will submit a signed memo to the FEMA Regional Office stating any change in Territory officials.

Restrictions on approval authority of the above named officials: None

Agreed:

Lourdes A. Leon Guerrero
Governor

Date

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

**ATTACHMENT 2
CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 C.F.R. Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Anthony M. Babauta, Governor's Authorized Representative

Name and Title of Authorized Representative

Signature

Date

**FEMA-TERRITORY AGREEMENT
FEMA-4495-DR-GU**

ATTACHMENT 3

LIST OF DESIGNATED AREAS AND PROGRAMS

Eligible applicants are eligible to apply for emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the Territory of Guam.